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Proceedings of the Annual Meeting of the State Bar Association of North Dakota

North Dakota State Bar Association

PROCEEDINGS

of the

ANNUAL MEETING

of the

STATE BAR ASSOCIATION OF NORTH DAKOTA

Fargo, North Dakota

August 10 and 11, 1936

* * * *

M. A. HILDRETH, President, Presiding

PRESIDENT HILDRETH: The meeting will come to order. I will call on Reverend Beard for the invocation.

REVEREND BEARD: Oh God, our Heavenly Father, we bless Thee for this beautiful morning. During the night Thou hast given rest to our bodies, refreshed our spirits, fitted us for the duties of this hour, and we rejoice in this gathering, rejoice in the associations with these brethren, and we pray Thee that Thou wilt direct them by the wisdom they need for the duties of this hour. Bless the officers and members and all their associates in directing the affairs insofar as they may in this great land of ours. Hear us in our prayers, we ask it in the name of our Lord. Amen.

PRESIDENT HILDRETH: I introduce to the Bar Mayor Fred Olsen of this City.

MAYOR OLSEN: Friends— I hardly know how to address a group of men such as you are, who are so well versed, so I will make my remarks short and sweet.

You know the City of Fargo is glad to welcome this organization. If there is any one body of men the city can depend upon to keep the straight and narrow path as far as the laws are concerned, it is the attorneys. They not only help us obey the laws, but I think from my own experience this is one body of men where the clients have to get down to bed rock and tell all of their trouble to, and I think with one or two exceptions, that confidence has never been misplaced irrespective of who the attorney is, those confidences are respected.

You are a body of men who are striving to improve your own organization. Now we are glad you are here. We want you to have a real good time here. If you don't, don't blame it to the city, blame it to the citizens of ours who are trying to represent us. It is on their shoulders whether you have a good time or not. I have assumed they are going to try to give it to you.

We appreciate our city being chosen as a gathering place. We are very much interested in the amount of good will which comes out of your own organization in meetings such as you have here today.

Again I want to thank you for being here. I want to thank the President for asking me to represent the city. We want you to have a real good time so when you go away you will have nothing but pleasant memories of your stay.

PRESIDENT HILDRETH: Mr. Mayor, we are very glad to have you here with us this morning, The Bar of North Dakota, and we appreciate indeed the very kind words that you have spoken.

I will now call upon the Honorable C. J. Murphy of Grand Forks to respond to this address.

MR. MURPHY: Mr. President and Mr. Mayor, fellow lawyers:

Speeches of welcome on occasions of this kind, and responses seem to have become a tradition; as far as I am concerned they have always seemed more or less a useless ceremony for when conventions of this kind are held in a city we know we are welcome. We know it because we confer considerable benefit upon the city that we favor with these gatherings.

So far as the City of Fargo is concerned, we know from prior experiences that it is a very hospitable locality and we have friends here who are always glad to see us; they say so anyhow, and unless they have ulterior motives, they are glad to see us. I know some of the citizens of Fargo with whom I have associated during the past couple of days who have ulterior motives. They will pretend to have no interest except yours at heart but if you get mixed up with them on the golf links, and the other kind of skin games that they usually are putting on in Fargo, you know very well they are after something, for the good will they are showing and the hospitality they claim to have.

Now I am glad that the Mayor has said that we are going to be taken care of while in Fargo. That re-assures me. I was driving along one of the streets yesterday afternoon, or yesterday evening, and suddenly all kinds of loud alarms were given, whistles and tooting of horns, and I think a policeman appeared on the scene. I had run one of the street signals—it wasn't green, it was red, so I want to warn the brethren from the rural districts and small towns to look out for these street signals.

We have the Mayor with us and I do hope that he will pass the word on to the police force and tell them if anybody attending this convention from the rural districts violate any of the metropolitan customs and requirements of the great City of Fargo, they will kindly overlook the default and turn their eyes the other way.

Now gentlemen I got hold of the law journals of this organization covering a period of several years, and I read many of the responses made on those occasions to these speeches of welcome. Some of them were serious, some of them learned discussions of this, that and the other thing. Some of them intimated that a fellow making the speech essayed to be a humorist. Now I am a serious sort of a man. I don't desire to appear humorous at all. I am just a lawyer trying to make my living and have a great deal of difficulty in accomplishing that result, so I want you to treat this discourse of mine as being serious, as it is, and I want to assure Fargo, and the members of the bar of Fargo — and where is

that man Pollock? He is a tough nut, I want to assure all of the Fargo members of the Bar that up to the present time we appreciate thoroughly, we appreciate very thoroughly what they have done for us, and know that they would have done something to us if they could. We hope they keep up the good work and that this convention will pass off as being one of the most successful we have had in recent years.

I know we are going to have a good time and we are going to behave ourselves as well as we can. We have a few judges around here of the district and the state Supreme Court so we will have to watch our step. If we don't, we will be checked up by them.

We have a lot of reports and business scheduled to come on at this time so I will close by saying we thank the Mayor. We are happy to be here. We are going to conduct ourselves as a serious organization of men should conduct themselves.

MAYOR OLSEN: Mr. President I will go down now and put a policeman on every corner.

PRESIDENT HILDRETH: We will now take up some of the reports—the report of the Executive Committee.

MR. MCBRIDE: Mr. President, members of the North Dakota State Bar Association:

REPORT OF EXECUTIVE COMMITTEE

As Secretary of the Executive Committee, I submit a brief report of the action of this Committee during the past eleven months.

A regular meeting of your Committee was held at Fargo on September 28, 1935, at which time Fargo was designated as the place to hold the 1936 annual meeting of this Association, and the President was authorized and instructed to arrange the date of the meeting, and to advise the Cass County Bar Association that it was the official host.

A budget for 1935-1936 was submitted by the President and was approved as proposed.

A contribution of $20.00 was made by the Association, to the fund of the American Bar Association, for the purchase and placing in the Church at Treguier in Britany, France, a stained glass window as a memorial to St. Ives, the patron saint of the Law.

The President was authorized and employed to appoint a special committee on municipal law, in addition to the regular list.

The President submitted names of members to be appointed on standing committees, and after a discussion and some changes, the same was approved.

The President was authorized to offer a prize, of not more than $100.00 for the best article on some subject to be selected, the details of such plan to be worked out later.

A special meeting of the Committee was held at Fargo on March 18, 1936, for the purpose of considering the resignation of B. F. Tillotson, as Secretary-Treasurer of this Association, which was effective March 15, 1936. Same was approved and accepted, subject to audit, and M. L. McBride was appointed to fill his unexpired term. M. L. McBride's resignation as member of the Executive Committee in the 6th Judicial District Bar Association was accepted and Theo. B. Torkelson, Vice President of such Association, was appointed a member of this Committee.

A special meeting of the Executive Committee was held at Fargo on August 8, 1936, for the purpose of conducting the regular business thereof and consideration of resolutions referred to it at the last annual meeting of the Association. An auditing committee consisting of John J. Nilles, Hugh H. McCullough and Theo. B. Torkelson was appointed by the president and audited the books of the secretary-treasurer. Action on the resolutions is reflected in the formal report thereof made to the Association at the annual meeting here today.

PRESIDENT HILDRETH: We will now have the report of the Secretary-Treasurer.

SECRETARY MCBRIDE: This is some length, so I would move that it be filed and printed in Bar Briefs, and not read at this session.

It was so moved, seconded and carried.

REPORT OF SECRETARY-TREASURER

Former Secretary-Treasurer B. F. Tillotson resigned as of March 15, 1936, and the present Secretary-Treasurer was appointed to fill such vacancy. Having in mind that the number of licensed members of the bar showed a decrease, consequently the income of this Association showed a like decrease, although it must be borne in mind that this report covers a period of only eleven months, compared with the usual period of one year covered by like reports in the past. For the reason given no new activities have been encouraged, except the S. A. contest. There has been little expense of our Committees, with one or two exceptions.

The role of Editor was a new one to me. I appreciate that the publication belongs wholely to the members of the bar of this state, and with the limited space possessed by this publication, it has been my endeavor to furnish the members articles of current interest of a length that can be printed in such a small publication, rather than indulge in an attempt to edit any original articles. Ye Editor is open to suggestions from the members of the bar at all times.

A financial statement follows:

SECRETARY-TREASURER'S FINANCIAL STATEMENT FOR THE PERIOD OF ELEVEN MONTHS FROM SEPTEMBER 5, 1935, TO AUGUST 4, 1936

Balance Last Annual Meeting		$1,430.34
Total		$1,430.34
Balance 1934-35 Account:		
1935 Meeting	$388.63	
Executive Committee	194.04	
President	60.00	
		642.67
Balance for New Administration		$ 787.67
Received From Bar Board		2,585.00
		$3,372.67

Expenditures

	Budget	Expended	
Bar Briefs	$ 350.00	$ 232.43	
Bar Briefs, November 1935	500.00	417.66	
Executive Committee	300.00	223.79	
President	200.00	37.06	
Postage and Printing	200.00	117.38	
Secretary-Treasurer-Editor	900.00	785.00	
1936 Annual Meeting, Including Reporter Fee	600.00		
Citizenship Committee	100.00		
Miscellaneous	125.00	146.02	
Committee on Unlawful Practice of Law	100.00	15.62	
Total	$3,375.00	$1,974.96	
Balance			$1,397.71

Respectfully Submitted,

M. L. McBRIDE,

Secretary-Treasurer Bar Association of North Dakota

The undersigned Auditing Committee hereby find the within and foregoing report true and correct.

JOHN J. NILLES,
THEO. B. TORKELSON,
HUGH H. McCULLOUGH,
Auditing Committee.

M. L. McBride, Secretary-Treasurer,
State Bar Association,
Dickinson, N. D.

Dear Sir:

The records of the State Auditor's office show that during the period September 1st, 1935, to August 3rd, 1936, there was paid from the State Bar Fund to the State Bar Association the sum of Twenty five hundred eighty five Dollars ($2585.00).

BERTA E. BAKER, *State Auditor.*

By J. O. LYNGSTAD, *Acting Deputy.*

Bismarck, N. D., August 3, 1936.

I, J. H. Newton, Secretary-Treasurer of the State Bar Board of the State of North Dakota, do hereby certify that between September 4, 1935, and August 3, 1936, I approved vouchers and turned over warrants to the State Bar Association as their pro-rate share of annual license fees paid, in the aggregate sum of $2585.00.

I further certify that the Bar Board has collected and holds for the account of the State Bar Association further fees amounting to the sum of $1000.00, said fees comprising the pro rata share of 200 license fees paid since the date of the last voucher of the Bar Association, to-wit: February 29, 1936.

J. H. NEWTON,

Secretary-Treasurer, State Bar Board.

Mr. M. L. McBride, Secretary,
State Bar Association of North Dakota,
Dickinson, North Dakota.

Dear Sir:

This is to certify that the balance of the funds carried in the name of the State Bar Association of North Dakota at the close of our business August 4th, is $1,392.07.

Very truly yours,

A. A. MAYER, *Cashier.*

Bismarck, N. D., August 4th, 1936.

This is to certify that the balance on deposit to the credit of the State Bar Association of North Dakota in the Bank of North Dakota at the close of business August 4th, 1936, is the sum of Five Dollars and sixty four cents ($5.64).

THE BANK of NORTH DAKOTA,

THEO. W. SETTE, *Auditor.*

MR. PALDA: I move you that the report of the Executive Committee be adopted and approved.

MR. LACY: Second the motion.

Motion duly put and carried unanimously.

MR. PALDA: I make the same motion as to the report of the Secretary-Treasurer.

MR. LACY: Second the motion.

Motion duly put and carried unanimously.

PRESIDENT HILDRETH: We will have the report of the Committee on Comparative Law.

REPORT OF COMMITTEE ON COMPARATIVE LAW

Mr. President:

When we recently recalled that we had been assigned to this Committee on Comparative Law we undertook to ascertain its functions. We were informed that such a Committee first came into existence as an American Bar Committee and that its duty was largely to deal in matters of International Law and Practice. We were told by the American Bar that, as International Law was something foreign to the interest of State Bars, we should here deal with the subject of uniform state laws. But here we have a Committee on Uniform State Laws. Then we discovered that one of the most recent and important activities of certain special committees of the American Bar had been in the field of governmental and constitutional changes affecting the rights and interests of the citizen. Accordingly, within that field of research thus signalized as important by the American Bar your Committee submits the following on the subject:

THE ITALIAN LABOUR CHARTER AND CERTAIN RECENT ACTS OF CONGRESS.

A STUDY OF COMPARATIVE JURISPRUDENCE.

Comparative Law as a subject of scholastic interest is the comparative study of different systems of law or legislation. Our own system expressed first, and in a foundational way, in the broad outlines of the federal constitution was itself the product or the outgrowth of studied comparisons made by philosophers, historians, and students of political science and sociology from the time of Aristotle.

Today the question is raised, and probably within this decade that question will be determined, whether the basic and fundamental characteristics of our government should be changed and how great the change should be. It is a question whether we should attempt to adopt the forms and methods of administration and the doctrines of government prevailing in other nations and adapt them to our needs; and what the consequences of such an innovation might be.

In this connection the fact of paramount concern to the lawyer is that government is not a by-product of law. It is not an entity separable from the body of law. On the contrary, government evolves within the system and, in a sense, all law is an expression of government.

A change in the basic theory of government cannot be accomplished without an equally fundamental change in the entire system of law. A basic change in the law to that extent may be a change in government.

Wise, intelligent, scientific modification of our jurisprudence can never be arrived at until practicing attorneys as a class participate in public education and the moulding of public opinion. It is the practicing lawyer who observes and best understands the effect of the practical operation of law and government on the affairs of the citizen in his every day experience.

To reach the practical consequences of certain congressional legislation, assuming that legislation may ultimately be made constitutional, your Committee will now briefly undertake to point to certain analogies and contrasts in comparison of the Italian Labour Charter of April 23, 1926, with the National Industrial Recovery Act, and particularly, "the little NRA" of coal mining, the Bituminous Coal Conservation Act of August 30th, 1935.

Under the Labour Charter certain syndical associations of employers on the one hand and of employees on the other can be formed. Likewise, associations of independent artists, artisians and professional men may be organized. Within regulations of government and law needless to review, these associations can supervise and control their own affairs and levy assessments, to create funds for maintenance of the organizations, compulsory insurance, and other purposes. These employers' syndicates, however, are always separate from the workers' syndicates and mixed organizations are not recognized by the State. Local syndicates are grouped into provincial and inter-provincial, which in turn are grouped into federations or confederations, the organizations are referred to as syndicates of the higher order. Such syndicates are recognized as legal entities entitled to bring action in the labour court.

Above these syndicates there is a certain liaison organization, political in character, connecting the units of federation under political control and creating the Italian Corporation. But this corporative system is not comparable to our private corporations.

The Corporation is chartered by the Minister of Corporations. These Corporations in turn make up the National Council of Corporations which recently was made to entirely displace the Chamber of Deputies which had become a mere rubber stamp for the decisions of government.

The chief functions and power of these organizations of employers and workers is the right and duty to enter into collective bargaining and labor contracts which must be in writing and, of course, approved by agencies of the State. The purpose of these collective labor contracts is to set forth precise rules on matters of disciplinary relations, wages, hours of work and working conditions. But the power of labor to strike is abbrogated. If two or more workers cease work in such a manner as to disturb the continuity of operations, they are punishable by a fine. Employers who close their factories or offices for the object of compelling employees to modify existing labor contracts are punishable by a fine.

If a controversy arises, the syndicate of the higher order, the federation of employers' units in any given category, or the federation of labor syndicates may bring proceedings in the labor court.

The labor court draws from a panel of experts who, exercising judicial functions with the court, may settle the controversy.

In short, this system of laws is projected into the long struggle of the workers to seize government and maintain a socialistic state ruled by the proletariat. The system was invented after the workers' revolution had placed them in power and after they had proven their complete inability to administer government and industry.

With this bare skeleton or crude outline of a certain legal system before him, the practical and experienced lawyer would at once ask these questions: Can either party exert undue pressure on the other in making the labor contracts? By what theory or according to what influence are the decisions of the Labour Court arrived at?

So we turn from form to substance to note this basic doctrine of the Italian Corporate State: that the masses of human individuals, especially in the lower economic strata, are considered incapable of intelligent and efficient government; that liberalism in democracy has well demonstrated its own weakness, inefficiency, extravagance and utter incompetency; that the whims and desires and the interests of individual citizens must be made subservient to the superior and paramount interest of the totalitarian state; that the best interest of the citizen is advanced as the best interests of the state are subserved. One could find much interest in the addresses of Mussolini to the National Council of Corporations and Chamber of Deputies wherein he criticises the huge and inefficient bureaucratization of government in America.

Accordingly, when the labor contract is made, it would appear that there can be no pressure by labor in threats of strike, no over-reaching by either side. The contract must be written to best promote the superior interests of the State by insuring continuity of full production and wages "consistent with the normal demands of life." Nothing is said about profits or returns on in-

vested capital. Perhaps those results were intended in 1926, which are now a fact, viz., that the government itself holds a majority of shares in a number of key industries, controls banking and credit, supervises the establishment of new plants and the expansion of old ones, has established a gold monopoly, directs foreign trade, has acquired control of all sources of industrial investment and, recently, in preparation of war, appears to be ready to almost completely displace private management and make the managing heads of industry direct agents of the State.

Hence, when any controversy takes form between the syndicates of employers and workers and is taken to the labour court for settlement, just one question is of importance, viz., what is the best interests of the State? By provisions of the Labour Charter, the court is expressly authorized, when the interest of the State so dictates, to change and re-write the labor contract. It appears to adjudicate private contract rights only as the exercise of private right may serve the superior purposes of State.

This Italian system of labor laws bears down on the workers. They may be treated fairly and reasonably in the matter of wages, hours, etc., but they are held in place and prevented from taking undue advantage by threats of force or violence or walk out.

Let us now turn to the National Industrial Recovery Act of June 16, 1933, as, in a sense, re-enacted in the Guffey Coal Bill of 1935. The Act has been declared void but it still stands as the statement of a theoretical system of administration, and the evidence is overwhelming that certain powerful groups of labor, reinforced by intellectual reformers of great influence, will insist on steps being taken to make valid new legislation of this character. The Act's declaration of policy is in part:

"To induce and maintain united action of labor and management under adequate governmental sanctions and supervisions."

Trade or industrial associations or groups may adopt Codes of fair competition which, approved by the President, become binding upon the industry. But when there is no Code of fair competition, the President may prescribe and approve such a Code for the given trade or industry. When the President discovers destructive wage or price cutting or other activities contrary to the policy of the Act, and finds that it is essential to license business enterprises in order to make the Code effective, no person thereafter can engage in the business without such license.

So much for the matter of form. But the heart of the NIRA was in Section 7-a which required every Code to contain the condition that employees shall have the right to organize and bargain collectively through representatives of their own choosing and be free from the interference, restraint or coercion of employers of labor, etc. It has already been noticed that Codes shall establish standards of maximum hours of labor, minimum rates of pay and such other conditions of employment as may be necessary to effectuate the policy of the Act; and that the Codes are subject to

the approval of the President; and where there is no Code fixing such maximum hours of labor, minimum rate of pay, and conditions of employment the President may prescribe one. The system of economic government outlined in the NIRA was improved and carried forward in the "little NRA" of the coal industry. Briefly let us refer to the Bituminous Coal Conservation Act of April 30, 1935, which, also has been declared void by court decision and its re-enactment attempted in 1936. A coal commission is formed to be appointed by the President. The commission shall formulate a working agreement to be known as the Bituminous Coal Code. A tax is laid on production of coal at the mine but any producer who accepts the Code agreement shall be entitled to a drawback of 90% of the tax. Producers are organized by districts and elect a district board. The board may establish marketing agencies and adopt by-laws, levy assessments, establish minimum and maximum prices subject to the supervision of the coal commission.

The Code must contain provision quoted above from the original NIRA that employees shall have the right to organize free from interference or restraint of employers, and no employee required to join a company union or live in a company house or trade at the company store, etc. A labor board is created with one member a representative of producers, or employers, another the representative of labor and the third appointed by the President. The statute however fails to indicate from which of the different kinds of labor organizations, now in remorseless strife for supremacy, this labor representative would be selected by the President. There might be a great difference in results whether the labor member represented skill and white collar workers and craft unions, such as those found in the American Federation, or unions formed on industrial lines.

This labor board can adjudicate labor deputies. Significantly the board can determine whether any organization of employees is controlled or dominated by the employer. That point—right of company unions and alleged interference — has been the source of nearly all bitterness and controversy for four years. Decisions may be reviewed by the Circuit Court of Appeals, but the statute makes no change in the rule of that court that it will usually refuse to weigh and review contradictory evidence on questions of fact.

These two systems of legislation, foreign and domestic, are analogous in form and outline, and they contain some striking similarities of phrase. They are analogous also in this fact: that the labor charter is essentially the complete system of Italian syndicalism and as such it so completely rules the economic affairs of all citizens that the power and duty of the Chamber of Deputies has been displaced. And, on the other hand the coal mining law, if made valid and extended to textile, steel, automobiles and transportation, would create so colossal a structure of administration — carried out by mere orders, rules, regulations

and administrative decisions — that the functions of Congress as a parliamentary body would be unimportant.

And there is this analogy in the two systems: All threads of supervision and control lead up to the single hand of the head of government. That single head of government may dictate the administration according to his own personal views or, in a democracy perhaps, he may be compelled to administer the law according to the demands of a powerful pressure group.

The part of each law which overshadows all others in importance relates to labor. Each law provides for organization of employees and workers, for collective bargaining and labor contracts. One provides a labor court and the other a labor board to settle disputes and the court or board, in each instance, is controlled by the head of the State through appointment of the persons holding the deciding vote.

Whether either law would be administered to advance the interests and satisfy the demands of a proletariat of workers would depend upon the point of view of the Chief Executive and the influence that might be exercised upon him. And this brings us to one striking contrast..

In the Italian system labor, and for that matter management, will receive just such consideration as may seem not inconsistent with the superior interests of the State as a whole to maintain production without interruption. Labor is deprived of its power to strike and it has no power to bargain or threaten politically. On the other hand, this proposed congressional legislation is definitely phrased to protect and advance the interests and demands of labor and compel the obedience of other interests to those demands.

Further, when the commission is appointed which in turn may promulgate the Code fixing wages and hours of labor, etc., the organization of workers is in a position to express approval or disapproval of appointment by the offer of political allegiance and support on the one hand or strikes on the other.

When the third member of the labor board is appointed, with the deciding vote in event of disputes, the same condition exists, and finally, when the labor board sits in judgment on disputes the labor representative can use all of this coercive influence, physical or political. To illustrate: if John L. Lewis proceeds successfully, with or without official encouragement, to displace company and craft unions by industrial unions, thus taking to himself the power to call a strike throughout and industry from coast to coast, his one representative of the workers' organizations on the labor board would be in a remarkable position to dictate its decisions — and thus dominate and control this entire colossal industrial government supervening and obscuring mere parliamentary government.

In short the Italian syndicalist and corporative State created by a system of laws similar in outline to this newly projected

American legislation, is a Fascist regime. Under that system the State first froze the workers in a position of subserviency to the State and then gradually relieved management and private ownership of its cares and responsibilities. This proposed American legislation does not and cannot create a Fascist State so long as labor retains the right to strike.

American government and jurisprudence has never followed and never will exactly follow any other known pattern. It is and always will be an adaptation of other systems with modifications. As to what form of government this new legislation would ultimately bring about, we submit the following if only to stimulate interest by contradiction:

First: In the beginning the popular support of the system by combinations of great associations of workers and intellectual liberals and other forces, numerous and influential in elections, would produce an administration definitely socialistic in character and results.

Second: In time government control and supervision, and management of credit and finance, would lead to government ownership. This management and ownership of industry and finance would bring about a huge bureaucratization of trained, educated and skilled persons whose interests would gradually conflict with the demands of ordinary workers and others in the lower strata of social organization. Finally a strike would mean not a quarrel with private management but with federal government and, accordingly, with federal troops.

The Issue? Force against force, and either a dictation by the workers in an American adaptation of Communism, or dictation by other forces in an American adaptation of Fascism.

If the foregoing seems merely to be an intellectual exercise, the Committee should be forgiven for they believe there never was a time nor an occasion when lawyers should so interest themselves in the matter of Comparative Law.

HOWARD G. FULLER, Chairman.
W. E. HOOPES.
GORDON J. CARPENTER.

PRESIDENT HILDRETH: Gentlemen, you have heard the report of the committee. Is there any discussion on this topic?

MR. CASEY: I would move you that the remarks as read and delivered be extended on the records of this meeting.

(Motion duly seconded, put and carried).

PRESIDENT HILDRETH: The report of the Constitution and By-laws Committee is next.

SECRETARY MCBRIDE: I thought perhaps some of the members of this committee might be here. Inasmuch as they are not I shall read it.

REPORT OF COMMITTEE ON CONSTITUTION AND BY-LAWS

To The President and Members of the State Bar Association:

Your Committee on Constitution and By-laws of the State Bar Association respectfully submits for your consideration the report of that Committee made for the 1935 annual meeting of the State Bar Association in accordance with the motion adopted at that meeting whereby that 1935 report was ordered printed in the proceedings of the Association for submission and action at the 1936 annual meeting, and we recommend that the report of that 1935 Committee found at page 129 of the Bar Briefs for December, 1935, be submitted for consideration at the 1936 annual meeting of the Association, and we respectfully recommend that the 1935 report be adopted as therein recommended by the majority of the 1935 Committee.

Dated this 21st day of July, 1936.

CHAS. A. VERRET,
L. T. SPROUL,
Members of Committee on Constitution and By-laws.

MINORITY REPORT OF COMMITTEE ON CONSTITUTION AND BY-LAWS

— 1936 —

To The President and Members of the State Bar Association:

Your Committee on Constitution and By-laws of the State Bar Association respectfully submits for your consideration the report of the Committee made to the 1935 Annual Meeting of the State Bar Association, and set forth at page 129 of Annual Bar Briefs, December, 1935, be submitted for consideration at the 1936 Annual Meeting of the State Bar Association and taken up and disposed of at that time in accordance with the motion adopted at that meeting; and that after due and further consideration of the said Committee Report, as printed in said Annual, we respectfully recommend that said Report as therein set forth be accepted and passed in toto as recommended by the Chairman of said Committee.

Dated this 23rd day of July, 1936.

L. J. WEHE,
(Former Chairman of Committee-1935.)
Member of Committee on Constitution and By-laws, 1936.

PRESIDENT HILDRETH: Gentlemen of the Bar, you have heard the report of this committee. Is there any discussion?

MR. LACY: There are a number of items that were printed in the December issue of the 1935 pamphlet and it is pretty hard

to take them up this morning unless we adopt the resolutions in total, because there were several amendments submitted and I think that unless we do adopt the report. In fact we have to; otherwise it is hard telling which one to act on first. At any rate, unless we adopt the report of the committee, we will have to go over the various amendments and decide whether or not we want to adopt the respective amendments.

PRESIDENT HILDRETH: The question now appears on the report of the majority of the committee. Then we will take up the minority. Does the chair hear a motion to approve the majority report of the committee?

MR. WARTNER: I make a substitution motion that that matter be made a special order of business at two o'clock this afternoon, or at some other time in this session so we may have an opportunity to study over the matter.

PRESIDENT HILDRETH: If there is no objection, this matter will be postponed until tomorrow at the opening of the meeting at ten o'clock a. m. It is so ordered.

The Committee on Jurisprudence and Law Reform is next:

SECRETARY MCBRIDE: Mr. President, I have a letter from Judge McKenna. I thought perhaps he might be here to read this report himself, but as he is not present I will do so.

REPORT OF COMMITTEE ON JURISPRUDENCE AND LAW REFORM OF THE STATE BAR ASSOCIATION OF NORTH DAKOTA

Your committee respectfully recommends that the report submitted by Hon. James Morris, Hon. Horace Young and Hon. T. A. Toner at the Annual Convention of 1935 be readopted for the reason that this committee considers it important that the matters therein contained should be presented to the Twenty-Fifth Session of the Legislature. The former report was as follows:

I.

"The practice of interposing sham answers, verified on information and belief by the attorney of record, which are withdrawn upon the call of the calendar just as soon as a jury term of court arrives, is growing and puts the lawyer in a rather unenviable light with the laymen who understand the practice.

"Your committee believes that the situation might be improved by having a law passed, making it possible to dispose of such answers on motion without waiting until a term of court arrives.

"Your committee therefore recommends that a committee of the Bar Association be appointed to study the advisability of presenting to the Twenty-fifth Session of the Legislative Assembly a bill to the effect that where such answers are interposed the court may on motion based on the affidavit of the plaintiff or

some one for him familiar with the facts, to the effect that the answer is a sham, require the defendant to verify the same positively, and if the defendant refuses to do so, authorize the court to strike the answer, with the same force and effect as if no answer had ever been served.

II.

"The statutes of North Dakota are distributed throughout the 1913 Compiled Laws, the 1925 Supplement and five volumes of Session Laws. Since the publication of the Supplement we have had approximately one thousand changes in the law of this state through the enactment of new laws, amendments, and repeals. The complicated search necessary to determine what laws are now in force results not only in confusion but in many instances causes unnecessary and expensive litigation. Your committee believes that the situation may be materially improved by either a new compilation or a codification of the statutes. We, therefore, recommend that a committee of the Bar Association be appointed to study the advisability of proposing to the Twenty-fifth Session of the Legislative Assembly a plan for either compilation or codification of the statutes and that such committees report its plan to the next regular meeting of this association for further consideration.

III.

"Several preceding committees on Jurisprudence and Law Reform have warned the profession against the tendency of vesting in administrative officers and boards the power to render final decisions involving substantial individual and property rights. We agree with our predecessors in that regard and recommend that where such rights are involved, that no further grant of such power be made without providing for judicial review."

Your committee is of the further opinion that a great deal of unnecessary time and expense is involved in the trial of jury cases before the district courts where the amount involved is but $200 or less, that often thirty jurymen or more are held in attendance at an expense to the county of perhaps $150 per day to try cases involving small sums and where the verdict of the jury is often $25 or less, and that it would be a matter of economy if these cases were tried to the district court without the intervention of a jury, that substantial justice would be done to litigants in such cases and there would be a much more expeditious dispatch of business.

Your committee therefore recommends that all issues of fact in an action for the recovery of money only, where the amount involved is $200 or less, shall be tried to the court, and neither party shall be entitled to a jury trial in such actions.

We further recommend that a committee of the State Bar Association be appointed to take all proper steps looking to an amendment of Section 7, Article 1, of the Constitution of the State of North Dakota, so that the trial of civil actions in district

courts where the amount involved is $200 or less may be tried to the court only, without the interposition of a jury.

Respectfully submitted,
GEO. M. MCKENNA.
C. F. PETERSON.
BURTON WILCOX.

PRESIDENT HILDRETH: Gentlemen, you have heard the report of this committee. What do you want to do with it?

MR. ADAMS: I move the adoption of the report.

MR. LACY: Second the motion.

MR. MURPHY: Does this motion mean that the committee that have made this report shall proceed to function by presenting the matter to the next legislature, or are we simply adopting the old report anew with the understanding that such a committee shall later be appointed?

PRESIDENT HILDRETH: As I understand the motion, that a committee shall be appointed by the chair to take up this matter to present it and handle at the next session of the legislature.

MR. MURPHY: Is that the recommendation in the report that was adopted a year ago?

PRESIDENT HILDRETH: I don't think so.

MR. ELLSWORTH: May I inquire if the burden of this motion depends on the appointment of a committee for the purpose of considering the matter?

PRESIDENT HILDRETH: That is the way I understand it. If I am wrong, I am glad to be corrected. (Motion duly put and carried). The report is adopted. The chair will make the appointment of the committee before adjournment.

The report of the Committee on American Law Institute.

SECRETARY MCBRIDE: There is no report filed as yet.

PRESIDENT HILDRETH: The report of the committee on Uniform Laws.

MR. BRONSON: Mr. President and Gentlemen of the State Bar Association:

REPORT OF COMMITTEE ON UNIFORM STATE LAWS

To N. D. State Bar Association.

The National Conference of Commissioners on Uniform State Laws has now been functioning for about forty-five years. This Conference is composed of Commissioners from each of our States and territories who are appointed by the Executive authority in such jurisdiction.

This Conference has proposed and promulgated for adoption by the various States some fifty-eight model Uniform Acts. These Acts have been adopted in the various States and territories so that the total number of Uniform State Laws now in effect throughout the States is approximately 700.

North Dakota has enacted eighteen of these Uniform Acts promulgated by this National Conference. They are listed according to the years of their adoption as follows:

Uniform	Negotiable Instruments Act	(1899)
"	Desertion and Non-Support Act	(1911)
"	Proof of Statutes Act	(1913)
"	Sales Act	(1917)
"	Warehouse Receipts Act	(1917)
"	Aeronautics Act	(1923)
"	Declaratory Judgments Act	(1923)
"	Firearms Act	(1923)
"	Illegitimacy Act	(1923)
"	Acknowledgment Act	(1927)
"	Act Regulating Traffic on Highways	(1927)
"	Motor Vehicle Anti-Theft Act	(1927)
"	Motor Vehicle Registration Act	(1927)
"	Air Licensing Act	(1929)
"	Veterans' Guardianship Act	(1931)
"	Reciprocal Transfer Tax Act	(1931)
"	Act to secure the Attendance of Witnesses from without the States in Criminal Cases	(1933)
"	Motor Vehicle Operators' and Chauffeur's License Act	(1935)

The big theme and purpose of this Conference, functioning with the legal thought and aid of Commissioners throughout our country, is to secure better expression of the law, more uniformity and simplicity of law, in those fields of the law where uniformity of law is deemed desirable.

The work of this Conference is becoming of greater importance by reason of the cooperation of many organizations in this country seeking legislative acts which will better harmonize Federal Legislation and State Legislation.

The American Law Institute now engaged in the voluminous task of re-stating the law is cooperating with the work of this National Conference. The Council of State Governments which is seeking to better inform and cooperate legislators in the various States is cooperating with this Conference, particularly in the field of Interstate Compacts.

Irrespective of the question of whether the New Deal activities of the Federal and State Governments should be favored, this Conference has been receiving requests for proposed Uniform Acts by both proponents and opponents of New Deal legislation. On the one hand are those seeking to preserve for the State their

rights and powers; on the other hand are those seeking New Deal legislation in that field of law found by our Federal Courts to be within the rights and powers of the States.

Respectfully submitted,
HARRISON A. BRONSON of Grand Forks,
PETER A. MCWINTER of McClusky,
ROBERT W. FREDRICKS of Jamestown,
Committee on Uniform Laws.

I move the adoption of this report.

Motion duly put and carried.

PRESIDENT HILDRETH: The report of the Legislation Committee.

MR. CAIN: Later in the session a brief oral report will be made.

PRESIDENT HILDRETH: If there is no objection to that, we will take up the report on Citizenship and Americanization.

MR. NILLES: Mr. Hendrickson is unable to be here and asked me to read the report.

REPORT OF CITIZENSHIP AND AMERICANIZATION COMMITTEE

CITIZENSHIP

What is the central idea of citizenship? We have a notion that it is one of relationship of the State to the governed. No one can be a citizen all by himself. Robinson Crusoe may have been a sovereign, but a citizen he could not be. The conflicts between labor and capital that rent his little state were only such as swept across his own breast. Most envied of mortals, he could placidly monopolize any part of the trade and commerce upon his island without fear of being proceeded against under any Sherman anti-trust law. He could follow his ancient habit of taking nine hours sleep each night and not be stigmatized as a reactionary. Happy old citizen of the universe, hero of so many generations of youngsters of all ages, you and your mythical island have become objects of admiration and envy to old boys as well as young whose elbow room in this world is being painfully hedged in.

The nature and origin of the State have been subjects of much metaphysical speculation. We cannot hope to deal with such an abstract subject in a way to pass muster with the philosophers, and therefore shall not attempt it. Indeed the philosophers have differed widely among themselves and each of them has had a theory of his own. It may be interesting, but we think it is not highly profitable for our present purpose, to consider whether the one who holds that government is founded upon the cowardice and fear or primitive men is right, or whether the theory that the natural state of man was a state of war and that men joined together to keep from fighting each other or at least to keep from

fighting as individuals rather than in groups, is correct. It is not without significance, however, that both of these views imply the social contract which would establish as the basis of society the right of self-government rather than the divine right of kings. But it is important that as far back as it is permitted us to look over the troubled and distant seas of the past, over which the race has painfully found its way, we see evidence of union and government among men. We may also say that while we see groups of men fighting against each other in the first instance, in very small groups, the increasing size of these battling units gives ground for the hope that there shall ultimately be evolved a group so large that international war shall cease altogether.

What is the true relationship of the State to the citizen? Some writers have elevated the State to a species of deity, for the benefit of which men exist. We take it that the State is an institution evolved from human experience and designed for human ends. According to our view it is its main object to do those things which are essential to the protection and development of the individual which in his isolation he cannot do for himself. The effect upon the individual is the real test of the beneficence of government. If the condition of men generally were worse with government than without it, then that institution should be swept away as a thing of evil. It is an instrumentality and not an end, and it is its primary function to elevate men and not to keep them down in slavish submission to an abstraction with no consciousness of its own.

It took many centuries of groping before the individual was discovered as an institution. In the ancient republics the State was the ultimate thing and the individual existed for it alone. And until the very modern era the little that came to him except toil, came not by right but by grace of government which was the gigantic perquisite of those who controlled it. It is, we think, not extravagant to say that the individual did not completely arrive until the establishment of the American Commonwealth with its immortal Declaration that governments derive their just powers from the consent of the governed and that they were founded to secure certain great human rights. It may be suspected, and we think with a good deal of truth, that primitive man had within him a certain instinct for order which even the lower animals and the birds do not appear to be without, and just as the physical laws of nature evolved order out of what appeared to be chaos of mists and waters, so the spiritual laws implanted in the bosom of man were the seeds from which government was to spring. If that be true, government should proceed with great caution in nullifying the work of nature and in substituting the standards of human enactment for those natural laws upon which the State reposes and which brought it into being.

We have said that the central idea of citizenship is one of relation. But the relationship involved is not primarily that of one man toward another. The terms good citizen and good man come near to being synonymous, and a universal readiness to do

unto one's neighbor as one would have his neighbor do unto him would accomplish more in the direction of making a just and beneficent state than all the constitutions and systems of government that were ever devised.

In our country, the term citizen leaves no ambiguity as to a man's relationship to his government. He is an equal partner in the work of governing. He stands upon the same level as those about him and the State is what he and his fellows make it. The thing that we most like to emphasize is that it is a democracy. Perhaps it would be more nearly correct to call it a democratic republic, but if we do not insist upon accuracy as to terminology, the characterization of democracy will apply to us very well.

It is in general a government based upon the will of the men of mature age who have the right to participate equally in the direction of our public affairs. We thus have political equality, and political equality is a very great thing in itself. It needs no argument to justify it. When we read of some of the forms of government that have existed upon this earth of ours in the not too remote past in which the nations have been divided into classes, with those below drudging for those above and having less hope of rising to the surface than was enjoyed by a Roman slave, and compare those systems with our own, we shall admit, we think, that the evils of democracy are as nothing compared with its benefits. The realization that a man, however lowly his birth or however humble his circumstances, is a member of a State even though it may be of second rate, and that he is the political equal of his fellow man and inferior to none, has a stimulating effect upon his spirit. It incites him to stand erect upon his feet in the simple majesty of his manhood. How much greater an appeal with equality of citizenship in a great nation like ours make to his pride, and how truly will it elevate him to a place of dignity such as that ascribed to the Roman Citizen by the eloquent Cicero in his speech against Verres. "Men of neither wealth nor rank, of humble birth and station sail the seas. They touch at some spot they never saw before where they are unknown and no one can vouch for them. But in the single fact of their citizenship they feel they shall be safe."

It must be admitted, however, that this particular sort of elevation exists rather in imagination than in fact, so far as concerns the practical advantage of American Citizenship to a man finding himself in difficulty upon a foreign shore. But one can see that it might be made more nearly a reality without depending upon bombastic assertion of the rights of an American citizen under a foreign jurisdiction.

Those who confuse liberty with democracy are prone to decide that whatever restraints democracy may fasten upon men, they still remain free. But freedom, to man in society, consists in his right to use his faculties and to profit by their use, subject to the equal right of other men to do likewise, and it is the important function of any State to restrain only such exercise of his

faculties by man as may injure others. With this qualification, freedom should be safeguarded not merely because it is a right of the individual man, but because its enjoyment by developing enterprise has been the great agency in pushing forward civilization. And men should be permitted to build up their characters in the only way in which strong and robust characters can be built, not in the stifling hothouse of governmental restraint but in the free and open fields played upon by the sunshine and beaten by the winds and storms of democracy.

Burke well said that great empires and little minds go ill together. If the people who rule are composed of pigmies, how can the nation be great? Far more effectually than by adding new stretches of territory to their domain, self-governing nations can expand by the growth of their citizenship in the robust and self-reliant attributes of real manhood. Such States find their greatness not in the numbers but in the quality of their citizens. And instead of chafing them under the curb, they should encourage them to show their paces and drive with a loose rein.

But the people must respect their own liberties, for no Constitution, however perfect, can save a people from itself. It may serve as a mighty dyke sufficient for a time to hold in check the rising tides of tyranny in its many forms, but it will be certain to be swept away by the settled habit of thought and the persistent pressure of the public opinion of a nation. It is important that such opinion should be as free as the Constitution itself. The wise and venerable Franklin in almost the last words spoken in the convention when the final step was being taken in the adoption of the Constitution gave an illuminating answer to this riddle of our system. "It can," he said, speaking of the Constitution, "only end in despotism as other forms have done before it when the people shall be so corrupted as to need despotic government, being incapable of any other."

Respectfully submitted,
J. E. HENDRICKSON,
Fargo, North Dakota.
HERBERT G. NILLES,
Fargo, North Dakota.
CHARLES COVENTRY,
Linton, North Dakota.
FLOYD B. SPERRY,
Golden Valley, North Dakota.

PRESIDENT HILDRETH: What will you do with this report, gentlemen? If you have no objection we will approve the report, place it in our records and print it in the usual manner. Hearing no objection it is approved and will be printed.

At this time I will appoint a committee on resolutions — Mr. Bronson of Grand Forks, Mr. Shaw of Mandan and Mr. Barnett of Fargo.

I have been informed, gentlemen, that a number of members of the bar are on their way and some very interesting matters are to come up before we get through, so we will recess until 2:30 P. M.

Afternoon Session

PRESIDENT HILDRETH: Will the meeting come to order.

Gentlemen I appointed a special committee sometime ago on revising the probate code in this state. I understand that members of this committee were unable to get together and Mr. Buck is the chairman of that committee. I would like to have him say a word about the situation.

MR. BUCK: Mr. President. It became evident after the appointment of the committee and preliminary canvass of the situation that mere amendments to the different sections of the code would not meet the situation. It also became apparent in the limited time we had at our disposal that it would be impossible to revise or change the code so as to make a creditable report to present to this association at this time.

After conference with other members of the committee, it seems to us that if the committee can be continued and give the matter further consideration and revise the code so that revision may be used perhaps later in connection with the revision of the whole code, that it might be the best way to get at it. We did not feel a makeshift report at this time would be advisable so if it meets with the approval of the association to continue this committee with authority to act, I think it would be the best.

PRESIDENT HILDRETH: And embody the idea of making this report at the legislature?

MR. BUCK: Yes I thought we could have the report ready to submit to the executive committee before the session of the legislature; if it met with their approval, the matter might be presented to the legislature.

PRESIDENT HILDRETH: That is all right. Unless there is some other suggestion, it will be continued.

MR. WARTNER: I think Mr. Buck overlooked one matter. The idea was also that the committee request members of the State Bar to send to the chairman of the committee suggestions as to what they thought should be in the proposed code. Is that not true?

MR. BUCK: I didn't overlook it but I was going to ask the committee to refer to the Bar Briefs.

PRESIDENT HILDRETH: The record will show the statement made by the chairman.

We have quite a number of important matters to take up this afternoon. I hope the gentlemen in presenting their views on the

different matters will not take an unusual time but will come right to the point.

The chair will recognize Mr. Fredericks of Jamestown. Will you speak louder, please.

MR. FREDERICKS: This is the first time, Mr. President, I have been accused of talking so low that the people can't hear me. I think I shall be able to make myself heard.

Mr. President I want to appear here, not with a view of apologizing because before an association of lawyers where important matters are to be considered, personal matters should fall by the board, and we lawyers are used to objections and contentions anyway.

Now I understand, and with the utmost respect, and with not the slightest attempt at disrespect to the report, which I understand has been filed, or is about to be filed by the honorable executive committee of this association, with respect to the matters appearing on page 49 of the 1935 Bar Briefs, a resolution relating to the listing and grading of lawyers —

PRESIDENT HILDRETH: Excuse me. The Secretary suggested to me, and I think it is a wise one, that we agree that he read to you the report of the executive committee on the subject matter you desire to speak on.

MR. FREDERICKS: I was going to read it.

PRESIDENT HILDRETH: Go ahead.

MR. FREDERICKS: I will say first before there is anything before the House, that is your honor, Mr. President knows I wrote to the honorable president of this association with respect to the resolution that had been submitted to the executive committee for action at the 1935 session, and Mr. Hildreth notified me — I have the letter, that nothing had been done, and that he desired me to be prepared to submit the matter at this meeting and to this association again.

Now then, pursuant to that, I took the matter up with our local association, the Stutsman County Bar Association, which called a meeting and which passed a resolution, which I shall presently show to you, but nevertheless on Saturday the executive committee got together and they did file and prepare a report which I have here in my hand, which the secretary has kindly handed me. It reads:

"Your executive committee to whom was referred resolution relative to Lawyers' Lists, compilation of same, and their publication for consideration before the next meeting of the Association, at which time they were to report back, beg to submit the following report:

"It was moved, seconded and carried that this executive committee recommend that whereas the American Bar Association

have under active consideration the matter of legal law lists and directories, that the resolution on page 49 of Bar Briefs for December, 1935, which was introduced at the 1935 meeting by Mr. Fredericks of Jamestown be deferred and action withheld until such time as the American Bar Association makes its findings and recommendations relative thereto."

To this report, we respectfully wish to make the following objection:

"The report of the honorable Executive Committee is respectfully objected to, with respect to deferring action upon the resolution appearing at page 49 of the 1935 annual Bar Briefs, for the reason and upon the ground such action was not and is not within the contemplation of the action of this association, at its 1935 session in Grand Forks on September 7th, by which the resolution was referred to the said Executive Committee for action, and we now respectfully urge that the resolution be now acted upon by this Association, acting as a committee of the whole; that the resolution be adopted and that the criticisms and recommendations contained and embraced therein be molded into the canon of ethics of this Association, and also that suitable legislative action with respect thereto be fostered and promoted by the proper committee of this Association."

I want to say, gentlemen of this convention, that I am not unmindful of the fact that we should not take any attitude that would be deemed an affront to the honorable Bar Association of America, and I have taken the liberty to interview the President, who is here today, and ask him whether or not it would be deemed an affront to their Association, for this Association to take action upon the matter that has been pending before them for over a year, and he told me that decidedly not. It was the practice of the States to pass on these matters, and if they desire, to report to the Association that they were seeking that kind of information.

Now then my friends, in order to get this matter before this Association at this time, I beg leave to read the resolution that was introduced at the last meeting of this Association:

RESOLUTIONS

BE IT RESOLVED, by the North Dakota State Bar Association in Convention assembled, at its regular annual meeting at Grand Forks, North Dakota, that whereas there is now and for many years has been in existence publishing concerns or corporations which are carrying on the business of compiling lawyers' lists and publishing those lists in book form, some of which, in a comprehensive method, take in the entire United States, Canada, and other countries, and, in the published list of attorneys, by a system of letters and figures, they pretend to indicate and grade the professional ability, standing and reputation of the respective attorneys so listed, or, by prominently indicating that certain attorneys have no rating; and,

WHEREAS, such published lists or books are extensively sold and distributed among lawyers and business concerns all over the country with the view to guide prospective clients in the selection of counsel located in the locality where such prospective client might have need for professional aid, and,

WHEREAS, it is well known that the process of grading, above referred to, is secretly carried on without notice to the attorney whose standing and professional ability is thus marked and indicated, and,

WHEREAS, it is likewise well known that there exists no standard by which or under which such markings or gradings are measured or arrived at, and,

WHEREAS, it must be apparent that in many instances such listing or grading tends to operate as a black-list to those not in favor, and, further, that in cases where the higher or highest rating is bestowed, with respect to them it borders on inethical and pernicious advertising, although not promoted or solicited, and,

WHEREAS, there is no other profession where such practice is the vogue or tolerated.

NOW THEREFORE, be it further resolved, that the publication and circulation of such lists and such gradings and ratings is frowned upon and condemned as entirely unfair, ungrounded, and unprofessional and inethical, and we hereby recommend that the Legislative Committee of this Association make a thorough investigation of the matters herein referred to and promote the passage of legislation to prohibit the publication and circulation and selling of such books, lists, and ratings, and to declare that the use of such publications as an advertising medium by members of the bar in this state be deemed unprofessional and inethical.

Now then this report was submitted to the executive committee, and I was willing at that time that it should be so submitted because I wanted to let the members of the Bar have an opportunity to look into it, but I have always insisted that this Association is just as capable as its individual members to pass upon whether or not we want to frown upon this kind of thing, or let it go, with all due respect to the committee and with all deference to the American Bar Association, whom I do not wish to or want to affront.

I say to the membership of the Association that if you have any red blood in you, if you have any feeling—you may have A-B ratings, I may not have an A-B rating, it don't make any difference whether I do or don't, or whether you have or not, but how in the name of heaven is it that any smarty from Chicago, or New York, come into our towns and sneak into the back alleys, offices of insurance companies or chambers of commerce, and get a meter on your brain capacity.

If there were a blacksmith organization and anybody undertook to put a stamp of inferiority or superiority on their members

they would be in fighting mettle. Now as to the lawyer, we tolerate that. Somebody from New York comes up here and snoops around in the dark without notice to you, and says that Mr. So and So is a notch or two below the gentleman on the other side of the table. Mr. Burk is way under and Fredericks has no rating at all; he is no good. Is he judged by the number of cases he wins or loses? That is no criterion. And so you go down the line. There are fellows with an A-B rating who haven't any more conception of law than a six-year-old boy. There are fellows with no rating at all who have a better capacity than those with the highest rating.

Who is going to say to me that my brain has shrunk? Who is going to say to me that my standing is no good in my community? How are they going to tell, these people who publish these lists in New York? Are you going to stand for it? You won't if you have any red blood in you, or any self respect. If the lie detector were put on some of these fellows with the A-B ratings maybe it would tell a different story. The whole thing is preposterous. It is an advertising medium. It is an imposition on the lawyers' dignity, and we should frown upon it, and then say to these Congressmen, if we can't handle it here in North Dakota, "You go over to Washington and exercise your authority as Congressmen of the United States and pass a law to put a stop to this attempted blacklisting of lawyers."

My friends, I would like to have an expression of this Bar upon the subject. It doesn't concern me any more than it does the rest of you. That is all I wish to say at this time.

PRESIDENT HILDRETH: I will ask the Secretary to read the report and action of the executive committee that was taken on Saturday last so that the gentlemen here will understand the subject matter before the convention.

SECRETARY MCBRIDE: Your executive committee to whom was referred, the resolution relative to lawyers' lists, compilation of same, and their publication, for consideration before the next meeting of the Association, at which time they were to report back, beg to submit the following report:

It was moved, seconded and carried that this executive committee recommend, that whereas, the American Bar Association have under active consideration the matter of legal law lists and directories, that the resolution on page 49 of Bar Briefs for December, 1935, which was introduced at the 1935 meeting by Mr. Fredericks of Jamestown, be deferred and action withheld until such time as the American Bar Association makes its findings and recommendations relative thereto.

PRESIDENT HILDRETH: The question is to be upon the adoption of that report. You have heard the reading of the report by the executive committee, and this matter was duly considered by that body. Objections have been filed here by the gentleman

from Stutsman County. You have heard the objections and the discussion. What action will you take on the report of the executive committee and the objections as made by the Counsel from Stutsman County?

MR. MURTHA: I move that the report of the executive committee be adopted.

MR. LANE: Second the motion.

PRESIDENT HILDRETH: The motion is now before this body for action. I recognize Judge Ellsworth from Stutsman County, who has the floor.

MR. ELLSWORTH: I came in a little late. I understand, however, that Mr. Fredericks made a motion. Am I right?

PRESIDENT HILDRETH: I didn't understand it. I understood he made some objections.

MR. FREDERICKS: I filed objections to the report and now it comes up on the report.

PRESIDENT HILDRETH: The question is now on the adoption of the report of the Executive Committee, and Judge Ellsworth has the floor on the question as to whether this report shall be approved or disapproved by this body. (Question called for.)

The motion was duly put and carried.

Is the Committee on Criminal Law and Enforcement present? The Attorney General has something to say in regard to this report. We will be glad to hear from the Attorney General.

MR. SATHRE: Members of this committee are State's Attorney Bergesen, Cass County, State's Attorney Palda of Ward County, State's Attorney W. B. Arnold of Grand Forks County and myself. We have prepared a rather brief report and I shall ask Mr. Bergesen to read it.

MR. BERGESEN: Mr. President and gentlemen:

REPORT OF COMMITTEE ON CRIMINAL LAW

Your committee is of the opinion that a proper re-draft of the Criminal Code would be a step forward as to law enforcement in this state. Such a re-draft should simplify procedure and reduce the chances of escape from justice by technicalities. Without affecting legitimate rights of the innocent, it should make conviction of the guilty more certain and give society a more even break with the criminal. It should include and have enacted into law the recommendations of the committee on Criminal Law and Procedure adopted by this Association a few years ago.

As conditions now stand, the odds are against society and the advantage is with the criminal. He can introduce evidence by deposition; the State cannot. He may be the only eyewitness to

the crime, but if he chooses not to take the witness stand, the State dare no comment on it. If an error is committed in the course of the trial, it is a mistrial if he is convicted, but a fair trial if he is found not guilty.

Our statutes defining such major crimes as forgery, larceny, burglary and others are so complex that, at times, it is difficult to determine which section of the statute fits the case in hand. Much more simple and comprehensive statutes are the law in other states. They simplify and expedite procedure. Many of our statutes covering similar offenses were passed by different legislatures without regard to the law then in effect. The result is inconsistency. For instance, if the crime of extortion is committed by an individual, not an officer, it is a felony. If the same crime is committed by an officer of the law, such as occurred at Minot recently, it is only a misdemeanor. Such a difference in penalty can hardly be justified.

Milwaukee, Wisconsin, has an exceptional record for crime control. Its chief law enforcement officer has become an expert on the subject. He has served for more than sixteen consecutive years. In this state, at the end of four years, when our sheriffs have become fairly well trained in the duties of their office and in the methods of the modern criminal, we fire him. In the light of our experience in other lines of activity, it is hard to find any reason for such a system. If the reason for the rule has gone, then the system itself should be abolished.

In a recent North Dakota case (State vs. Gugel, 260 N. W. 581) in which a criminal information charging that the Defendant did "take, steal and carry away" certain property, was amended to read that the Defendant did "**with fraud and stealth,** take, steal and carry away" certain property. It was held that the addition of the word "stealth" was not error as it was an amendment of form only, but the insertion of the word "fraud" was error since it added a new element and amended the information as to substance, which is tantamount to saying that stealing is not fraud and therefore must be honest. It is not for us to say that the Court is wrong but certainly a statute which makes such a decision possible is not without flaw. It makes our Court an unwitting instrument in discouraging enforcement and encouraging the further commission of crime.

After all obstacles have been overcome and the door of the penitentiary finally closes behind the criminal, then society goes to sleep. It has been ably represented in the apprehension and trial of the accused. His conviction proves that. But from that time on the State is not represented. The prisoner soon makes application for clemency. He appears before the Board in person, with relatives and friends, and often is represented by counsel. His side of the situation is presented in the light most favorable to him. Again, the advantage is his. There is no one there to bring forth the State's side of the case and in too many instances he wins by default. The statute should make proper provision so

that it shall be the duty of the State's Attorney of the interested county, or someone representing the State, to be present and assist the Pardon Board in getting all of the facts and thus protect the interests of the public.

The United States Department of Justice is showing the way in the matter of crime control. Most of the states are still floundering about in the horse and buggy stage. It is time for us to take a bird's-eye view of the situation, re-draft our laws to meet the modern needs, and so correlate our efforts with those of our sister states and the Federal Government that the enforcement of the law in this state may be more efficient and more effective.

To that end we propose that this Association recommend to the next Legislature the appointment of a Crime Commission, whose duty it shall be to make a full study of the situation and submit to the following session of the Legislature such laws as will bring about these purposes.

Respectfully submitted,
P. A. SATHRE, Chairman.
A. R. BERGESON.
W. B. ARNOLD.

MR. LASHOVITZ: Mr. President, I move the adoption of the report. (Several seconds were heard;) motion duly put and carried.

PRESIDENT HILDRETH: I think there is a committee on Selection of Judges. Did they decide to make a report? The chair recognizes Mr. Shaw of Morton County.

MR. SHAW: This is a rather delayed report. I have studied the situation considerably but I have found it a very large subject. The committee didn't get together so as to make a report until today and this report embodies something of the ideas that is manifest in several of the states, and in some cases declared as law. It is only a tentative report. It doesn't go into details and it is open to discussion, and I expect there will be some.

REPORT OF COMMITTEE ON SELECTION OF JUDGES, MADE AT THE NORTH DAKOTA BAR ASSOCIATION CONVENTION IN 1936.

The committee on selection of judges beg leave to make the following report:

This report which we submit to you will necessitate a considerable change in our constitution, and we realize that it is a radical change from our present system, but our desire in making this report and suggesting this matter to this Association, is to put the judiciary on an appointive rather than an elective system, and with that thought in view we submit the following plan, which plan is recommended as to its fundamental principles, and as to which the committee invites criticism and discussion, especially as to the details thereof.

The Governor should be given the power to appoint a chief justice, but before making such appointment he should have the approval of a small advisory committee made up of members of the Bar of the state chosen for that purpose by the State Bar Association and representatives from labor unions, commercial organizations, and agricultural societies. The appointment made by the Governor shall be from a list of twelve names submitted by the Bar Association.

The chief justice should be appointed for a term of ten years. The chief justice should be given power to appoint associates on the Supreme Court from the members of the Bar as presented by the State Bar Association.

The term of office of such associate justices should be for eight years; the Supreme Court to consist of the chief justice and four associate justices; the first appointments to be for two, four, six and eight years.

The Supreme Court as so constituted should have the power to name the judges of the several districts of the state. The term of office of the district judges should be for six years. Before the term of office of a sitting judge shall expire, a popular election should be held, submitting to the people at such election the question, shall he continue in office?

The incumbent judge should have no opponent, but would be running merely on his record. If the vote is adverse his term of office would end, and a new judge would be named by the appointing power. If the election approved his record he would continue in office for another term.

We submit this report as a plan or basis on which to build up an appointive system of the judiciary.

D. W. SHAW,
As Chairman, Committee on
Selection of Judges.

PRESIDENT HILDRETH: Gentlemen, you have heard the report of the chairman of the Committee. What action will you take on this report?

MR. CASEY: I move you that the report of the committee be laid upon the table until the next meeting of this Association. I certainly, under existing circumstances, am not in favor of the report of the committee. There are many things in connection with it that does not strike me as being proper at the present time, and the idea of a court selecting the judges does anything but appeal to me. I believe that is taking the power away from the people that they ought to have, and therefore, I believe this report needs very careful consideration before the Bar Association of this state can pass intelligently upon it. Therefore my motion for laying the report of the committee on the table until the next session of this organization.

MR. LANE: Mr. President, I agree pretty much with what Brother Casey has said here, but I wish to amend that motion, that it be not laid upon the table, but the report be received and filed, not adopted at this meeting, but filed, in order that it might be printed in the proceedings so that we can all read it and study it. I agree with Mr. Casey that we could not very well adopt that without further study, but I believe the report ought to be filed and printed in the Bar Briefs and not adopted at this meeting.

PRESIDENT HILDRETH: The motion of Mr. Casey was not seconded. Do you make that as an independent motion?

MR. LANE: I make that as a motion, yes.

PRESIDENT HILDRETH: Will you state it once more so I will get it clearly.

MR. LANE: I move you that the report of the committee be filed and be printed in the proceedings to be taken up at the 1937 meeting.

The motion was duly seconded, put and carried.

MR. PAULSON: I just wanted to say that there was something in that resolution to the effect that judges should run for office without opposition. If that could be amended to include county judges, I am in favor of it.

PRESIDENT HILDRETH: That might involve your political standing.

Now there was one report we passed by this morning, American Law Institute. Is the chairman of that committee present? Do you desire to make a report?

MR. VOGEL: Your committee's report is rather long. Unless it is the pleasure of the convention to have it read, I would suggest to have it filed with the Secretary and printed in the proceedings.

PRESIDENT HILDRETH: Any objection to having it filed with the Secretary without it being read and printed in the proceedings? There being no objection, it is so ordered. I think Mr. Bangert has something he wants to offer.

MR. BANGERT: I have nothing to offer except in connection with the proposed probate amendment and I think that should be threshed out with the committee. The idea was that I think we can amend and recodify not only the probate code but the entire code as well. At the next session of the Legislature, if we use a little good judgment and horse sense, I think it could be accomplished and I would like to get the opinion of the members of the Bar. I think if we eliminated all citations in connection with the publication of the code, and had the citations published in a separate volume, we could reduce the size of the code about one-half, and then the citations could be published in a separate volume.

Only the judges and lawyers are interested in these citations any way, and with these in the code it makes it almost next to impossible to get sufficient money to recodify the code.

I would like to leave that thought with your members of the Bar. So long as the committee is going to be continued, we might get your ideas for the committee.

REPORT OF AMERICAN LAW INSTITUTE COMMITTEE.

Mr. President, Ladies and Gentlemen of the Convention:

As might have been anticipated, no member of your committee on the American Law Institute had the good fortune to be able to attend the Fourteenth Annual Meeting of the Institute held in Washington, D. C., on May 7th to 9th, 1936. In making its report, therefore, your committee is necessarily limited in its information to the report of that annual meeting which will be found in the June, 1936, issue of the American Bar Association Journal.

That report is, however, most complete and most interesting. It is much too long to quote in full here. We shall not attempt to do so, but in lieu thereof, respectfully suggest that the members of the Bar read that report.

We think it not out of place to very briefly explain the origin of the American Law Institute, its purposes, and its works to date. The Institute was founded in 1923 at a meeting in Washington, D. C., at which a body of judges, practicing lawyers and law teachers assembled to consider the report of a committee which had studied certain defects in our law and ways and means whereby such defects could be reduced by action on the part of the profession. The formation of the American Law Institute was the result of the discussion of the Report.

The two important projects upon which the Institute has been engaged in the succeeding years have been (1) the Restatement of the Common Law, and (2) the drafting of model statutes in the field of criminal procedure.

The Restatement Of The Law

The object to be accomplished in restatement is the production of a clear, accurate statement of the Common Law in its various branches.

It is the purpose in making the Restatement to state the existing principles of the Common Law as they have been developed by the courts up to this time. Where a difference of opinion upon specific questions has arisen, the Institute necessarily is compelled to make a choice between the two positions. In making a choice it endeavors to state, so far as possible, the consensus of the best legal thought upon the question.

To summarize, the purpose of the Restatement is as follows: (1) to state the existing Common Law as developed by the courts

with such care and accuracy that courts and lawyers may rely upon the Restatement as a correct statement of the law as it now stands; and (2) to express the principles of law thus stated with clarity and precision.

Method Of Work

The initial responsibility for the preparation of the Restatement lies with an individual lawyer chosen to act as Reporter for the Subject. Around the Reporter is gathered an advisory group, some of whom are law teachers, some judges, and some practicing lawyers. This group and the Reporter submit their work to the governing body of the Institute, the Council. If, and when the material so submitted is satisfactory to the Council, it is sent on to be considered by the members of the Institute, members of the State Bar Association Co-operating Committees, and others who are sufficiently interested to give the work careful examination. Before any part of the Restatement becomes a completed work of the Institute, it must be approved by the membership at its Annual Meeting held in Washington each May.

Some idea of the thoroughness with which the work is done is found in the fact that while the Restatement project has been under way for twelve years, the first subject was completed only three years ago. The Restatement of Contracts was published in December, 1932. That was followed in 1933 by the Restatement of Agency. In the fall of 1934 the first two volumes of the Restatement of Torts were published, one dealing with Negligence, the other with Deliberate Wrongs. Subsequent volumes for this subject are being continued now.

In February, 1935, the Institute's publishers issued the Restatement of the Law of Conflict of Laws and in the fall of 1935, the Restatement of Trusts. (It is interesting here to note that the Restatement of Conflict of Laws is being translated into French by French scholars, with the approval of the Institute.)

At the present time the subjects in which Restatement work is going on are as follows: Property, Torts, Sale of Lands, Restitution and Unjust Enrichment (which includes Constructive Trusts, Quasi-Contracts and Kindred Matters.)

Work In Criminal Law And Procedure

Public dissatisfaction with the administration of the criminal law was brought to the attention of the Institute through a request by the American Bar Association for the preparation of a model code of criminal procedure. Preparation of such a code was undertaken in 1925. Work in this field necessarily took the form of a proposed statute, which if adopted, would supplant the existing statutory rules by those provided in the Code. The work was officially approved by the Institute at its Annual Meeting in 1930. By this time a number of states have already adopted Chapters or Sections of the Code and enacted them into statutes.

In conclusion, your committee recommends a comprehensive study of the works of the American Law Institute. For the younger members of the Bar particularly we suggest active work and co-operation with the Institute in the preparation of its future re-statements. Such co-operation cannot help but be beneficial to those assisting as well as to the Institute and to the entire Bar.

Respectfully submitted,

CHAS. J. VOGEL.
N. J. BOTHNE.
W. J. RAY.

PRESIDENT HILDRETH: Gentlemen of the Bar, I do not need to introduce to the lawyers of this state the gentleman who will now address you. He has been much in the public life of this state, active, full of pep, and ginger, and is now a member of Congress of the United States. I introduce to you Honorable Usher L. Burdick, who will address you on the subject of "Constitutional Law."

CONSTITUTIONAL LAW

MR. BURDICK: Mr. President and members of the convention: I have had some experience in this very court room in regard to taking off my coat and I wanted to be mighty sure that I was right this time.

I have been billed to speak on the subject of "Constitutional Law" but I didn't know that until I read your program today. I was advised that I could pick out my own subject, and I picked that subject out, but I am not inclined to want to deliver a post mortem speech. I was asked by the newspapers to present an advance copy of about what I was going to say, and I did that, and that has all been published a couple of hours ago, so there is no reason why you can't get the benefit of that speech by reading the newspaper. I just wanted to make that reference to it. However, I would like to present some of my views on the extraordinary and peculiar crimes of today.

On the subject of Constitutional Law, it seems to me that the very last body in the world that ought to complain against the decisions of the Supreme Court would be members of the Congress of the United States, because in my opinion it is the most unconstitutional body that was ever organized to function in the machinery of government.

The Constitution provides the ways and means by which you can pass legislation, but as the matter actually works out, none of the provisions of the Constitution are followed by Congress. For example if a bill is introduced into the Congress of the United States, it can be supported by a great majority of the people of the state, and still under the rules of Congress which control that body, there is no way you can bring that matter up even for discussion unless the committee to whom the bill has been referred

see fit and are willing to return the bill to the body with the recommendation that it do pass.

My experience in the Congress so far has been that no bill is referred back from any of the committees unless the administration in control is in favor of the bill, and I presume that is the situation whenever the Republican party is in control. At the present moment, the Congress of the United States consisting of 435 members, 330 of them are Democrats and the rest are divided among Republicans, Progressives, Farmer-Laborites and about 48 independent Democrats who do not follow anybody's whim but act upon their own guide in the Congress of the United States. But no bill can come before the body unless the administration wants that bill before it.

Even though a committee may report a bill back to Congress, and report it favorably for passage, still it must run another gauntlet before we get another chance to vote upon the subject; that is it must go before the most powerful committee of the entire Congress, the Rules Committee, which is always the mouthpiece of the administration, and if the administration does not care to have the bill come up for discussion, the rules committee refuse to report out the bill, and that is the end of the legislation.

There is only one way you can get that bill out if the rules committee are opposed to it, and the rules committee are in contact with the administration always, and that is to have a petition drawn and placed upon the speaker's desk, and under the present rules of the house, it requires 218 members, or a majority of the Congress to sign that petition, and thereby bring the bill out on the floor of the Congress. And mind you, then no one can sign that petition unless the Congress is in session at the time you sign, and the member desiring to sign it must walk down the aisle and appear at the speaker's desk while the Congress is in session and ask for the petition, and sign it in the presence of a going Congress.

I remember one occasion during the last session, when a Democratic member was speaking, that the speaker of the House temporarily adjourned the House for the reason he thought we were getting names enough to bring out the Frazier-Lemke Bill. We were in two names of having enough when the speaker noticed that with the conversation with the employees of the House that we were about to have 218 names, so he adjourned the Congress, and of course, no one could sign. We had six or eight lined up to sign. During the night 12 or 14 of those who had signed had change of heart and withdrew their names.

Every once in a while the Supreme Court of the United States has upset some of the legislation that has been passed by the 73rd and 74th Congress, and you hear a great many speeches in that body against the Supreme Court, but I am sure that it is not a partisan question at all. Some of the most able speeches delivered in Congress in support of the Constitution were made by the Democratic members of this body, so whether or not it is

going to be an issue in this country, the objection to the decisions of the Supreme Court, I do not know. I know that the sentiment is almost equally divided between the Democratic and Republican parties in regard to the decisions of the Supreme Court.

The Supreme Court, it seems to me, has gone a long way in the last four or five years in the way of interpreting legislation due to the economic conditions under which we are struggling. It has been the law for ages that courts can excuse the execution of contracts because of some act of God like floods and strikes, but until the decision in the Maine case never has that body ever established this principle of law, that the execution of a contract can be delayed when because of economic conditions, those who have entered into that contract are unable to protect themselves. It seems to me that that Court has gone a long way in interpreting the spirit of the times in which we live today, and I think we can all thank God sometime in our experience, and the experience of others, that there is a Supreme Court of the United States.

It is frequently passed around the Congress of the United States by written documents, something to this effect, "It is your duty to support this bill no matter how convinced you are that the act itself will be unconstitutional." So while we have a Congress with 435 members with over 300 lawyers, and many of them very prominent in their states, it seems that the times demand that the members of Congress vote blindly on some matters of legislation regardless of what they think the Constitution should be, or how it should be interpreted. But I think when we get through with all of it, there is plenty of latitude for progressive advancement of this country and the building of progressive public opinion within that Constitution.

I don't think it is necessary to amend that Constitution in very many particulars. Sometimes we proceed by mere suggestion and by mere habit. Now this afternoon, as an abstract proposition, I don't think there is a lawyer here in this room but what will agree with me, that it is unconstitutional for a National Bank, for the Federal Reserve Bank, and for the Federal Reserve Board to issue currency in this country. I don't think I would have one single objector and I believe if any such case were ever presented to the Supreme Court, and injunction asked for in the early stages of the proceedings, I am satisfied that each and every one of these institutions would be enjoined from issuing out currency of this country, because the Constitution says that among the powers given to Congress shall be the power to issue money and regulate the value thereof.

Now that has never been changed. We have never modified it. We have never repealed it. That is in the Constitution now, but remember that in 1863 when Lincoln desired to continue to completion the great battle between the north and the south, he needed funds for that purpose, and in appealing to those who had the funds of the country, he naturally appealed to the banking fraternity. Before they would advance any money for the per-

petuation of the government that protected them as well as everybody else, they demanded that the Congress of the United States would refer to them the power to issue money and regulate the value thereof. And we did that when we passed the National Banking Act of 1863, and we have simply followed that practice ever since, as a matter of custom. Remember the Constitution was never changed. The only change was made by an act of Congress, and it is unquestionable that the Congress of the United States cannot by an act change the fundamental law in that Constitution.

We completed the job in 1914 when we passed the Federal Reserve Act and again turned over to the Federal Reserve Board the Federal Reserve Bank's power to issue currency and regulate the value thereof, done by an act of Congress and never done by a change of that Constitution.

At this very moment in this country with five billion dollars of money in circulation, an additional eleven billion dollars of bank deposits in circulation, we find over four billion of the five billion of real currency in circulation has been issued by private institutions contrary to the Constitution of the United States. Those who believe in that theory of the monetary policy of this country are the first to find fault with it. One who either through the Constitution or the law objects to that theory of the operation of the money question, they demand their constitutional rights and they issue booklets on that subject, that they must obey the Constitution, and at the very moment they are circulating those documents that they themselves are recipients of the benefits, thereby conferring upon them the power to issue money and regulate the value thereof.

So it seems to me that the last body in the world that ought to complain about the decisions of the Supreme Court would be any member of the Congress of the United States. I think that is about all I care to say on the subject. That won't be in the record, will it? I hope it won't be.

I am like Colonel Brunner was years ago. They had a Republican Convention in this State. Colonel Brunner didn't get as much money out of the Old Line Republicans as he thought he ought to get. He got up in the convention and made a speech which was a progressive speech, an insurgent speech. It looked as though the whole convention had gotten away from McKenzie. Somebody said to him, "Mac, you had better straighten that thing out with the Colonel or he is apt to blow up the convention." So the colonel had been speaking for about forty minutes. They said there was a table with a pitcher of water on it, and two packages of bills, done up in $500 in each lot were placed near it. When the Colonel turned around to take a drink of water, he saw the bills, and the matter was immediately adjusted, and here is what he said:

"Now gentlemen, I have expressed that view of the situation. Now I want to tell you my real sentiments."

THE UTTERLY INSANE ACTIONS OF PRESENT DAY CRIMINALS

By USHER L. BURDICK, M. C.

The crimes that are now daily committed in this country put the old-time criminals to shame in almost any line of crime. Twenty-five years ago, the crimes we hear of today were seldom if ever perpetrated. In the old days we had criminals as we have always had, and always will have, but the acts of the old-time criminal were easily explained. They killed for money, for love and revenge, but killing for money was a last resort. All conceivable means were exhausted before any resort was had to the taking of human life. The old time burglar didn't want to kill, he didn't want money or valuables that bad.

Today the whole picture is changed. There are no old time burglars, but in their place is a set of young irresponsible boys, some in their teens, who will kill at the slightest provocation. The most grotesque murders occur every day in the year. The most unnatural crimes, crimes in which there seems to be no object or reason transpire before our very eyes.

Young criminals kill just for the sake of killing. There could have been no other object in the killing of the little Frank boy by Liepold and Loeb. The seven year old boy who killed his mother with a brick while she slept for no apparent reason at all, baffles the student of criminology. The many trunk murders, the rattlesnake cases in California, and many others, evidence the existence of such an abnormal criminal tendency in this country as to require intensive study for the security of society itself; further than that is the question of whether these apparently insane criminal activities is an evidence of the general degeneracy of the American people.

There is no question but what poverty caused by the general depression has greatly increased crime, but poverty alone did not contrive the endless number of unnatural crimes occurring all around us. Poverty did not cause that daughter to kill her mother with a hatchet, while her lover held the mother. The reason given was that the mother had failed to have dinner ready on time. That never has been, in all past history, any excuse for killing, and especially that failure of the mother would not arouse the killing instinct in her own flesh and blood. If it actually did, how could the girl's lover, at her command, assist in the murder? This whole affair is so unnatural as to demand thorough examination into all the facts and circumstances, surrounding the home, present and past.

The reason for many of these crimes will be found away back of the crime itself, the actual crime will be found to represent the consummation of a long line of causes into one overt act.

I don't pretend to be a criminologist, but I have had many years experience in prosecuting criminals, and from those years of experience, I have come to the belief that crime is the cropping

out of a long continued course of conduct that has been abnormal from a distant beginning; that the surroundings in which the criminal has been reared have contributed constantly to the creation of a criminal mind—a kind that must have its own way in everything—a mind that when once crossed becomes overcome with violent emotion rendering the possessor incapable of normal mentality during this aroused period.

It must further be conceded that the heredity instincts handed down by father and mother also are a contributing factor.

The main reason, however, for the countless number of unnecessary and unexplainable crimes of today, lies, I believe, in two words "neglected children." If we take this statement as a fact, and from that examine into the many horrid and unnatural crimes, we may come to some understanding of why these crimes were committed. A further fact which I do not believe the public will willingly accept, is that the neglected children are greater among the rich than among the poor. Neglect doesn't consist only in denying children food, clothing and shelter, but spiritual neglect is much more damaging. The companionship, the love, the everyday life of parents with their children, no matter whether the family be poor or rich, as money goes, is the character building substance that produces young men and women of sterling character, ambition, and a full realization of the purpose of life.

Applying these general observations to the recent abnormal murder cases, we may first look at the case where the seven-year old boy killed his mother with a brick while she slept. Only a few of the facts have appeared in the newspapers. The father and mother were separated; the boy lived with the father; the mother lived by herself and entertained her gentlemen friends; the boy, at the time of the murder, was visiting his mother. I do not know any of the other facts which we should know to come to an understanding of the case that would be complete. There are facts enough known, however, to give a clue to why this deed was committed.

This young boy should have been raised by his mother and received a mother's love. That this boy did not know; he had heard more about his mother than he had seen of his mother. The father no doubt was diligent in telling the boy about his mother. The mother could not have been of good character, or the possession of the boy would not have been given to the father. Courts, universally, place small children, in divorce cases, under the care of the mother, unless her character is such that the court believes she is not a fit person to rear a child. This child was cheated out of a mother's love; his mind had been poisoned against his mother; in her presence he saw the incarnation of the cause of his own unhappiness. While visiting his mother, men called to see his mother. His father was not one of the men, and this fact kindled in his mind and the intense hatred of his mother, and when the opportunity offered he satisfied his hatred by kill-

ing her. This diagnosis is made entirely from facts constituting the boy's "surroundings" and in addition there may have been hereditary instincts inherited from either his father, mother or both, that helped to build an uncontrollable passion.

Who knows but what this boy was pushed about, forgotten and neglected the most of the time. We do know that a mother's love was denied him and the ground was prepared for him to give back to society just what society had given him. He was murdered by inches during his life as a child, hence he gave back just what he got. Who knows but what he gave it back, too, to the identical person who was responsible for his loss of love, companionship, and loving care, which every normal child is entitled to and usually gets.

The neglected home is responsible for 90% of all crime. That neglect applies to all homes, rich or poor. There is some excuse for neglect in poor homes but none at all in rich homes, yet the rich homes are the ones which produce the most inhuman criminals with which we are compelled to deal. By rich homes I mean those whose owners are so financially situated as to be more than able to maintain a home under normal standards and requirements of our society.

In homes where the owners are unable financially to maintain such a normal standard of requirements, there is an obvious reason why the children in that home are neglected. But it is forced neglect, and by reason of it the children may grow up to be ignorant and may commit crime, but these kind of homes seldom produce the depraved criminal who kills and maimes in ways which challenge all reason and excuse.

Obviously if we desire to help children in the poor homes, our first job is to bring about economic conditions which will release the fettered owners from a forced life of neglect. We must again establish in this country an equal chance for all citizens, equal opportunities of life. We must see to it that we stop the program of permitting a few to gather too much of the nation's wealth, while the many must go without the necessities of life. If those who sit on the receiving end of Special Privilege had the right view of life, if they were Christians instead of Pagans, they would voluntarily release enough of their "unfairly gained wealth" to at least permit the many to have the absolute necessities of life. But the trouble is, these kind of people are not Christians. The Spirit of Christ is not within them. "Love thy neighbor as thyself," "Do unto others as you would others should do unto you" is as foreign to the philosophy of the recipients of Special Privilege, as right is from wrong.

Since the special few will not voluntarily give others a chance to live, the Government must step in and compel such an arrangement. The duty of the Government, then, in this connection is two fold, First, the Special Privilege which has enabled the few to gather too much of the nation's wealth, must be taken away, and every citizen placed under conditions that offer equal oppor-

tunities. Second, The wealth that has during the past 150 years been thus unjustly accumulated must be re-distributed through higher taxes on incomes and inheritances. We must put into operation the full meaning of the correct theory of taxation, namely, those most able to pay taxes must bear the burden of taxation.

A program of this kind will restore the ordinary American home to where the children can be properly cared for, attended to, and educated under home influences that will not destroy, but build character.

What about the rich home, the home of the recipient of some special privilege? There is no excuse for their neglected children. They have the means to provide their children with that which builds character. As a result practically all of our most inhuman criminals come from families who have not been forced to neglect their children. Any number of criminal cases can be sighted. Merely to make this statement, in view of every day occurrences, is to prove it. What about the case of Liepold and Loeb? These boys came from homes extravagantly rich in material goods. These boys were educated to the nth degree. They were cultured in society. They had every possible convenience of life. But they had too much. They had everything—they never knew what want was—through their great wealth, the parents had so satisfied every material want known in the catalogue of human existence, that these boys ceased to enjoy normal things. They grew tired of a life circumscribed by normal and moral community life. They craved for something new, some new experience that might thrill a soul already calloused by the limited satisfaction afforded by lawful society. In a depraved murder they sipped up the satisfying morsels flowing from one of the most hideous crimes of this century.

Over indulgence made possible by wealth, invariably deadens the sensibilities of these unfortunates. Flowing from this source we see a long list of abnormal criminals, the inverts, the perverts, the fetishists, and the saddists.

It will thus be seen that too much wealth at the disposal of children, is very much worse than no wealth at all. In addition to that the parents who are wealthy, extremely wealthy, grow as tired of the conventional experiences of life as do their children. The parents are too busy hunting for something new in the category of human experience, to give proper attention to their children. From the moment of birth, to maturity, many society mothers know much less about their children than do their neighbors. They are strangers to their children, and as a substitute for parental love they attempt to substitute those things which money will buy. Money can't buy love and loving care, but apparently the dames of Creosus in America do not know this.

Here again we can see the dire need of a change in our social conduct. Those who are too rich must be protected against them-

selves, if they are to contribute to the welfare of all. If we redistribute the wealth in this country, many of the homes which are being destroyed because of too much wealth will be saved and the children from those homes will become normal and valued citizens.

In all, the evidence points definitely to neglected homes as the breeding places of our modern inhuman criminals of today. Children are apt to give back to society just what society has given them, and in their early years just what the home has given them. A cold motherless mother who refuses to bestow upon her child the priceless blessings of mother's natural love, cannot expect to reap the rich harvest of their children's love in the years ahead. Neither should she be surprised if all happiness turns to grief over the actions of a saddist child.

We can stop crime by stop raising criminals and it cannot be done in any other way. The way is open to us to make this contribution to society, but will we do it? Will we wait long enough, in our bitter struggle for existence to understand why we have criminals and begin the program of their eradication?

PRESIDENT HILDRETH: Before I call on the next speaker, we will take a recess for five minutes. Recess taken..

PRESIDENT HILDRETH: The Association will please come to order.

On the 21st day of August, 1878, at Saratoga, New York, a dozen or more lawyers gathered together and laid the foundation for what is known as the American Bar Association, known throughout the world as the greatest Bar Association of any country.

Its membership extends into every state and territory in the United States and has many members in foreign lands. During the 28 years that I have been a member of that association, I have seen presidents come and I have seen presidents go. Many distinguished men have held the office of President of the American Bar Association, which is the greatest that can be conferred upon a member of our great profession.

I am not putting it too strong when I say of all the distinguished men who have filled that honored position, candidates for the Presidency of the United States, and others who have been Presidents of the United States, and Judges of the Supreme Court, and Ambassadors to foreign countries, I know of no man during the years that I have been a member of the Association that has given more time, or done more hard work for the benefit of the lawyers of the United States than Honorable William R. Ransom, our President, who will now address us.

ADDRESS OF PRESIDENT OF AMERICAN BAR ASSOCIATION

MR. RANSOM: Mr. President, members of the North Dakota Bar Association, ladies and gentlemen:

I am very glad to have the opportunity of meeting with the members of this Bar of North Dakota. If it is of any interest to you I may say that I shall always remember this occasion, not only for the many friendships which I have had the privilege of making in your city and among your members, but also because of this meeting this afternoon, which represents my last appearance as President of the American Bar Association, aside from the annual meeting which will be held in Boston during the week of August 24th.

I shall always remember most pleasantly, and I think there may be a certain significance in the fact that in the closing weeks of this year of Bar Association work, I have been in the Pacific northwest and in the northwest, in the Dakotas.

Now I count it a very great privilege to bring to you, and to each one of you, whether you are members of the American Bar Association or not, the very cordial greetings of your national organization of our profession. We in the American Bar have come to know and to respect highly many members of the Bar of your state, and I want to urge upon each of you, and all of you, for reasons which I may take the time to indicate in a few minutes, you ought all to take a larger interest in the affairs of the American Bar Association.

I suppose I might as well be frank with you at the outset in that regard. It has been a matter of very great regret to me that North Dakota has been and remains one of the relatively weak spots in the national organization of the Bar, with respect to the extent of which you lawyers are members of the American Bar Association. I don't for a moment suggest that this is your fault rather than the fault of the American Bar Association. I realize full well that because of conditions to which I shall presently refer, there has been naturally or instinctively a feeling on the part of many lawyers in this part of the country that the American Bar Association is something which is quite remote and removed from their daily work, practice and interest, and little or no reason exists why members of the Bar of North Dakota should be a member of the American Bar Association.

Those conditions, if they ever have been a condition, and to whatever extent they exist in the present tense will, I believe, be removed this year, and in the interest, not only of the profession in this state, but in the interests of a united and forward looking profession in the whole country. I hope that each one of you who is not a member of the American Bar Association will now consider the advisability of affiliating with that national organization.

Your remarks, Mr. President, make it rather difficult for me to proceed with this audience. I wish, sir, that I could feel the things which you have so kindly said were in some part true. So far as I am concerned, I am not and have not been for many years in politics. I am simply a lawyer who for the period of one year

has turned aside from a rather busy active practice to see whether something of a practical character could not be done with respect to the work of the organized Bar in this country.

Last July in Los Angeles after quite a contest with my lamented friend, James M. Beck, those who believe that the American Bar Association ought to be made representative of the rank and file of the whole profession, and ought to be made a means of serving the interests of all the lawyers, as well as the public, chose me to serve in this present capacity for the present year.

As to the circumstances of my election and as to the point of view on the part of some of those who brought it about, I sometimes tell the story of a friend of mine down in Westchester County, New York, who had a colored chauffeur. This chauffeur belonged to a church of his race. In due time he was elected deacon, and his boss said to him, "Sam, how did you ever come to be elected Deacon of the church? You drink and you gamble; you run about with these high yellow gals at night, how did you ever come to be elected deacon of the church?"

The chauffeur replied, "Boss, it was this way. There was a disreputable element in the church that just riz up and demanded recognition."

A friend of mine out in the middle west who was over in Paris with his family, when he heard of my election, wrote me a letter of congratulation, and you can imagine what he had been doing and the kind of places he had been visiting on the other side from the tenor of his letter. He said:

"Dear Bill:— If you are President of the American Bar, I want to say you have got a hell of a lot of branches over here."

The American Bar Association, as your president has said, was founded in the year 1878. It was founded by a relatively small group of serious thinkers, who through the function of the Bar Association, was to hold an annual meeting in some congenial place, at which some members could read learned and scholarly papers on phases of the law, and other members could devote themselves to more congenial and attractive activities. But there was no thought on the part of those who brought this national organization into being; there was no thought either that it ever would become largely representative of the whole profession; and there was likewise no prospect that even in the states of this country there would ever come into being strong, active state and local Bar Associations, which would through the years carry on active and vigorous work in behalf of the profession and the public.

At that time there were few state Bar Associations, relatively few local organizations only in the larger cities and such state and local organizations that existed were active only to a very small extent. The years ran on. I read the other night an address by Senator Elihu Root about 20 years ago in which he ex-

pressed a great deal of pride and gratification that the American Bar Association had at last obtained a membership of 10,000, and he indicated that some day if all the lawyers of the country would work together and pull together, that the American Bar might and should have a membership of fifteen or 20,000 lawyers.

Well today we have 28,000 lawyers, more than 28,000, but that is only about 17% of the lawyers of this country. There are in practice in this country nearly 175,000 lawyers. There are in State Bar Organizations of this country about 80,000 lawyers, of whom 38,000 are in the incorporated or inclusive Bar Organizations such as your own. There are between 100,000 and 110,000 lawyers who belong to some Bar Association, either state or local, but the fact still remains that so far as membership of the American Bar Association is concerned, that only about 17% of the lawyers of the country are in its membership, and in states like your own, the percentage of your lawyers in the national organization is only about ten per cent.

Now I would like, if I might for a few moments, in spite of the temperature and the hour, and the fact that you have already heard a great deal of serious discussion, I would like to talk to you for a few moments about the Bar Organization work, and about what I have observed with respect to Bar Association work in this country during the past year.

Some of you know that I have been in many states, I have been in practically every section of the country. I have seen during the past year probably more than any American lawyer has ever seen of the legal profession on its home grounds, in practically every part of this country. You know you will find some queer angles about this profession of ours. There is a good deal of an impression that up to this time lawyers in and out of the Bar Association are more inclined to take, rather than they are to share; more inclined to talk than they are to act; that we make a great many speeches; we make a lot of reports, pass a lot of resolutions, but that we haven't yet reached the stage in many states where we translate talk into action.

I heard a story in Iowa the other day which might illustrate that. It was a story of a court room into which one morning two lawyers came with a case for trial. The judge was calling the calendar. There were many other lawyers there waiting for their cases to be called. When their case was reached, they answered "Ready" and said that it was a short case, they had only two or three witnesses on a side. They said several witnesses were from out of town and would like to dispose of the case. The judge said he would be very glad to try the case, but asked if they would dispense with a jury. The plaintiff's attorney said there might be a question of fact in the case, but he could not tell. The defendant's attorney said that there was no question of fact at all, it was a question of law. The judge said, "I have no jury and if there may be a question of fact, I can't go ahead."

The plaintiff's attorney had an idea. In the jury box, there were seated a dozen lawyers waiting for their cases to be called. The plaintiff's attorney said, "Your honor, if the gentlemen of the Bar will be willing to serve, I am willing to take them as jurors and proceed on that basis."

The judge said, "Well the transaction involved is small and if these men will serve, we will go ahead." The lawyers said they would act as the jury, and they were sworn in. They proceeded with the case in which there was a little question of fact, so the case was finally given to the jury. The judge charged the jury, they retired somewhat before noon. Finally it came one o'clock, two o'clock, three o'clock, four o'clock, and still no verdict from these lawyer jurors. Then it came five o'clock and six o'clock and the judge wanted to go home, as some lawyers have found judges do, so he called up the bailiff and said, "Jim, go out and see whether that jury has agreed, or is likely to agree."

The bailiff came back and the judge leaned over the bench and said under his breath, "Jim, has that jury agreed?" To which the bailiff replied, "No, your honor, they haven't gotten through making nominating speeches for foreman."

You know it is often said this profession of ours is extremely conservative, devoted to the past rather than the future. It is sometimes said our profession is something like the looney bird, which is found on the Hawaiian Islands. This bird always flies backward. Scientists couldn't find out why this bird always flew backward, so the scientist said it was a great deal like the legal profession, "It didn't give a dam where it was going, but it always wanted to see where it had been."

You know about this conservatism of lawyers—there was a friend of mine near New York City who started out to go to Europe rather suddenly. He bought a berth on the boat and found himself very happily situated in the same cabin with a middle west lawyer, and they got along in a very friendly fashion until it came time to go to bed. This middle west lawyer took out from his luggage an old fashioned flannel night gown. The New York lawyer wasn't quite familiar with such things, but he imagined or suspected what it was; however, he couldn't see what he would be doing with it, so he inquired, "Brother what are you going to do with that?"

The other lawyer said, "I always carry one when I go to sea and at night I always put it on. I never go to bed at sea without wearing it, for who can tell at what hour of the night will come the cry, 'Women and children first.' "

You know you get queer impressions and you hear of queer things happening from bad associations. For example the president of one of the local bar associations who was just being inducted into the office, addressed the members present as to what he was going to do during his administration. He said, "Gentle-

men of the Bar Association, you know how the work of this Association has been carried on for years, and how great is the need for a change. Why take our committees—you know how frugal our committee work has been. Why in this Association for years on our committees half the men have done all the work and the other half have done exactly nothing. I want to promise you that under my administration that situation will be exactly reversed."

This year in the American Bar Association annual meeting, we expected confidently to make changes in the structure of that Association, which we think will entitle them to the confidence and the support of the rank and file of American lawyers. I realize, as do you, as I said a few minutes ago a great many lawyers in states like this have felt that the American Bar Association was too far away from them, that they had no part in its work, that the meetings were held in remote places, that relatively few lawyers, no more than 3,000 out of the 28,000 members attended, and that really the Association didn't have a form of organization which enabled it to speak and act the ascertained wishes of the rank and file of our whole profession, and that has been the feeling which has been encountered whenever the American Bar Association has undertaken to deal aggressively and affirmatively with the matters that are before the profession in the country.

It has been said, and said openly in legislative halls, and before executives, that the existing organizations of the Bar, the National Organization of the Bar represent a minority, and that a minority was not entitled to speak and act for the whole profession, no matter how wisely or how patriotic that committee might be. Well, it has been proved that this organization formed in 1878, formed with a structure of organization which was adapted to a small membership, and to people who met for social and scholarly purposes, has lumbered along and has done a great deal of good, has furnished a numerous amount of aggressive and patriotic leadership on many matters that are important to the profession on such subjects as legal education and unauthorized practice of law, and the like; but it is likewise true that the 2,500 or 3,000 lawyers who go to the convention have been those who have determined its policies and made its choice of officers, and from some of these states, states that have hundreds or thousands of American Bar Association members, the attendance from said states might be only a little handful of people, half a dozen or even less. In some instances, I have known that little group from that state have been selected the representatives of all the American Bar Association members in that state in the general council and other bodies of the Association.

Now what are we proposing to do this year? You may be interested in this here in North Dakota. You may be interested in it because it concerns you, whether you are to become a member of the American Bar Association or not. We are proposing a plan of organization which puts the codes of the American Bar Association and its policies and the choice of its officers at home in the different states and in the hands of the rank and file of the law-

yers in these states, whether they come to the annual meeting of the association or not.

What are the elements of that democratic plan, and what are the conditions that prompt it? No more than a word can I say about the conditions, but I do want to say this, as most of you know, this is the time when the profession of ours is the subject of a great deal of criticism and a great deal of bereavement. The motion picture, the radio, the radical magazine are insistently and consistently holding the lawyer up, trying to ridicule him, as a person that can't be trusted, and are trying continually to undermine public confidence in lawyers, and to destroy every capacity of the profession to exercise influence upon public questions.

I realize that the profession has not been free from blame. I realize that a magazine may pick out — a radical magazine may pick out conspicuous offenders in our profession and denounce them as public enemies and create an impression that in some way those men are typical of the profession, because in this country, as we know, it is only sensation which is new. The great constructive, honest, honorable work which is done day by day by the rank and file of American lawyers in all parts of this country gets no attention from press or radio or moving picture. There is nothing sensational about the service which this profession renders to the people of this country day in and day out.

But I personally believe there is a little more to this present agitation against the profession than that. I think there is in progress in this country, and I can demonstrate it with detail, if time permitted, an insistent and persistent effort to destroy and undermine the influence of the professions in this country. And I personally have no doubt, and I can cite you many instances to show that those who would remake America, if they could, according to blue prints borrowed from old world dictatorship, realize this profession of ours is one of the many hundred obstacles to their diabolical plans.

As far as I am concerned, I do not believe that any higher tribute was ever paid to the legal profession in America than the kind of criticism which American lawyers are today receiving from certain types of publications and certain types of men in political life of this country, men who know, and radical publications which know that the American lawyer and the American legal profession is after all one of the stabilizing forces of American life.

Now you, and you, and you, and I, as individuals, can do practically nothing about this criticism of our profession. You or I as individuals can do relatively nothing with respect to the great problems of law enforcement, against organized crime and the raising of standards of the profession, or with respect to the vital question which concerns the maintenance of the American democratic ideal of liberty under law. Individually we can do relatively nothing. This is an age in which the voice of the individual, unless it is highly publicized, or greatly demonstrated and backed

with resources of great organizations can exercise no great weight in this country.

The voice that counts in this country today is the voice of independent organized courageous groups in which the public may have confidence, and we think in that connection of our free and courageous press, and we are anxious to receive the independence of the press. We think of our great universities, we think of the independent judiciary, and are zealous to fight to preserve and defend our judicial system. But I believe there is something else American lawyers can do. I think they are going to do it. I believe that one of the valuable institutions and influences in this country can be a happy and self governing organization of the legal profession, which is neither dominated by clients nor subservient to political or official protection, but is able to speak in a courageous, disinterested way its deliberate voice upon matters which concern the law and the administration of justice in this country.

Now what are we proposing to create this year through this plan which is to be voted upon in Boston on the 23rd of August? We propose to do in the legal profession what has been so effectively done in the medical profession, and in other professional organizations, viz., the key of what is proposed is the creation of a national house of delegates of the legal profession under the offices of the American Bar Association, which will be put in complete charge of the policies and the choice of personnel and the leadership of American lawyers, with respect to the matters which are in the scope of the law, and the administration of justice, so that the American Bar Association and its policies would not be decided by a relatively few men who have the time and the railroad fare to show up at the annual meetings, but will be decided by the lawyers at home, in their states, without leaving their offices.

How is that to be done? Who are to be the delegates of that constituent assembly? I have already stated a delegate, one from each state, regardless of its size. Under the present plan a relatively few men get together on their way to lunch as the opening session is adjourned, and they pick some one. Under the new plan one from each state represents the American Bar Association in that state, will be nominated by petition of the members in the state and will be elected by mail ballot by the members at home in the state.

There are 48 states, the District of Columbia and Hawaii and the territorial possessions; that means there will be 51 delegates elected by mail ballot, wholly irrespective of the annual convention. Then there will be state Bar Association delegates, at least one from each state, with a little bit of increase of recognition for relative size in the number of lawyers in the larger states, the total number of State Bar Association delegates being 81.

Now how will they be chosen, the delegates from this association, for example? Your members of the national house of

delegates from this association will be chosen by you here in this state in whatever way you see fit. You can select your delegate by mail ballot, or you can have the executive committee appoint him, or have him elected at the annual meeting, or have him appointed by your president. You are entitled to a delegate, if you want it.

I want to say that I thank you and appreciate very much the action which this association took nearly a year ago in which you expressed an interest in this national organization plan.

There will be five delegates elected by The American Bar Association members that come to the annual meeting. There will be the Board of Governors, which is the administrative committee which functions between meetings, and the Board of Governors, which will be one from each Federal Judicial Circuit, that is ten members. Those members will be chosen from the ten circuits, one from each circuit. That is something like the present executive committee. It differs in two respects. In the first place the present executive committee is a wholly independent body which is intended to assume and correlate power and authority because it is not a part of, or really responsible to anything else for the Association.

The Board of Governors under the new plan will be chosen from the House of Delegates. Its members will all be members of the House of Delegates. There will be one from each circuit so that all parts of the country will be represented, while at the present time there has been a tendency to bunch or group the Executive Committee in the vicinity of Washington, D. C. For example at the present time the Executive Committee of the American Bar Association has no representative at all from the great Tenth Circuit which in territory is the largest of the circuits and embraces many states. There is no representative at all from New England which contains two Federal Judicial Circuits.

On the other hand there are several members of the Executive Committee from Washington, or its immediate vicinity.

There is another way in which this new plan is more democratic than anything we have had before. I shall refer briefly to that one angle of it. Take the situation as it stands today. Here we are two weeks away from the annual meeting. There is not a member of the American Bar Association who has any idea who is going to be elected to hold any of the Association offices. There are relatively few members of the American Bar Association who know who are going to be candidates for office. The nominations are not made until Friday morning of convention week, and a few minutes after they are made, the nominations are reported to a tired and weary meeting and usually are ratified by those present, a very unrepresentative method of choosing officers.

Under the new plan the nominations have to be made several months before the annual meeting, and have to be published so that every member of the Association and of the profession may

know who has been nominated. And there is a provision also for the making of independent nominations by members of the Association by petition in the event they do not like the nominations made by the state delegate.

I want to leave this thought with you. Relatively few of you are members of the American Bar Association but this plan puts in the hands of the members of the profession in this state, for example, in this Association which includes all the lawyers of the state, they all choose their State Bar Association delegates whether they are members of the American Bar Association or not, but no one can be chosen as a candidate unless he is a member of the American Bar Association in good standing, but the rank and file of the lawyers in this state, and the other states, will choose the State Bar Association delegate who will represent one-half of the membership of the National House of delegates of the legal profession.

Now what is it all about—why are we concerned with these things? I agree with any one who says that changes in the structure of an organization, mere economics are not so important. It wouldn't be worth any one's time to bother about those matters unless there was something worthwhile that could be accomplished. Personally I believe profoundly that if we can have in this country a national organization of the Bar which fully represents the whole profession, and which provides the means of finding out what the rank and file of American lawyers, and not the minority of American lawyers really think about these matters which affect the law and the administration of justice under this fine form of government, that you have got something that is worthwhile.

And I omitted to say that under this plan, the policies of the association are not going to be determined by a relatively few members who come to the meetings. They won't have a final say, nor can they affect the house of delegates, representative as they will—they will not have the final say. If there is a real controversy, or any doubt as to what the lawyers think about these matters, the new plan sets up the basis upon which there can be invoked a referendum by ballot by mail to the full 28,000 members of the Association, and that will end for all time the conditions with which we have been confronted, under which those who like to disregard the recommendations of the Bar say, "Well we won't pay any attention to that. You speak only for the minority of lawyers."

There are a great many things which are a serious task ahead of this Organization of ours, things which affect us in our daily work, things which affect the courts and the administration of justice, and things which affect our whole system of government and of justice and law. I am not going to take your time this afternoon to go into detail about any of them.

I do want to say this that at the Boston meeting this year on the 24th of August, and during that week there are committee

reports which have been sent out in the advance program pamphlet to all American Bar Association members, which do present a very important question upon which the Boston convention will act with respect to the law and the conditions of today.

One of these, for example, is a proposal for new uniform rules of civil procedure for the Federal Courts of the whole country. Those rules which have been set out are prepared by the Advisory Committee created by the Supreme Court of the United States. Those rules were, at my suggestion, sent by the Court to every member of the American Bar Association in this country, and the comments and suggestions of the rank and file of lawyers were invited, and have been received to a remarkable extent.

On Wednesday, August 26th, in Boston, we shall have a great open forum session which will be the final nation wide discussion of those rules, the opportunity for the Bar to be heard before the revision is made which will go to the Court at the end of September.

There are many other things which are in that advance program pamphlet which would interest every one of you as lawyers. If you haven't read it through, I suggest you do so whether you go to Boston or not.

I said that I believe there is a need, a place for a representative democratic national organization of our profession which can speak and act the true voice of American lawyers, rather than the voice or views of the minority. And when we survey the present state of public opinion and the issues which are before our profession and our country at this time, I think you all have to agree that there are issues on which the voice of the American lawyer ought to be heard.

I am not concerned with any question of party politics. Party lines mean little or nothing to me. There are none of these questions to which my mind has a partisan aspect, or should be given a partisan aspect, because there are some fundamentals which run deeper than party, which run deeper than sections but which go to the very vitals of the things in which we all fundamentally believe and try to preserve, no matter which political party may at the time hold our allegiance, or receive our votes. But we of the Bar have a responsibility, I think, with respect to issues which are in our field.

A few years ago a great Englishman, the Lord Chief Justice of England, wrote a book in which he reviewed the rise of governmental administration by rule and regulation, the rise, as he called it of bureaucracy in England, and I have heard it said that there has been rumors of that sort of thing in this country. It is an English book, not an American book, else I could not refer to it, but one paragraph has always stuck out in my memory. It seemed to point something of the duty or opportunity of American lawyers along with other good citizens.

He said that much toil and not a little blood had been spent in slowly bringing into being a policy under which the people make their laws and decide just how to administer them. If that office is to be overthrown by all means let the overthrow be accomplished openly. Never let it be said that liberty and justice having been with so much difficulty won we suffer it to be abrogated in a fit of absence of mind. I think that points to the duty and opportunity of the Bar.

No one expects that the American people are going to follow the voice of leadership of lawyers or the legal profession blindly, or that blindly people are going to make up their own minds, as they always have, on matters concerning that fundamental law as in respect to any other phase of governmental life, but I do believe we as lawyers have got to quit returning merely negative and unconstructive answers, or taking mere attitudes of opposition about these matters which affect law and administration of justice and the need of the life of the American people.

We have been far too much disposed merely to oppose and denounce and view with alarm action which we regard as unsound, and we have been very slow and reluctant to point the way in helping to bring about the solutions of the vexed problems which we have in so many phases of our law and our national economic, social and political life. And above all, we who know the background of our law and our constitution have a special duty to see to it, or help to see to it, that in this country liberty and justice, having with so much difficulty been won, are not suffered to be abrogated or imparted or taken away, or whittled away through any failure on the part of the people to be informed as to what is involved, and through any failure on our part as a profession to do our duty in telling the simple, imperative fundamental story of the American form of government.

Down in Virginia an old southern Colonel was quite given to rooster fighting and he had some mighty fine game birds. The Colonel just over in the next county telephoned over to Colonel Brown and said, "Bring over some of your roosters, and we will put on a little fight this afternoon." So Colonel Brown told his colored man to get out six of his best fighting roosters, put them in a sack and go over to Colonel Jones' place. So he did that and then went over to the neighbors. Colonel Brown took his sack of roosters out from under the back seat and expected to see his birds in fine trim for a good fight, but there was only one bird alive. The others had been clawed and destroyed; they had destroyed each other. The Colonel and the colored boy looked down at the remains of his fighting sextette and the colonel said, "Doggone, I thought you knew you were all on one side."

Well, it's about time, I think, that the American lawyers organized themselves and so conducted themselves and so get into the game on these tasks of practical Bar Association work that they will gain the realization that we are all on one side.

MR. LEWIS: I move that the address of Mr. Ransom be published in our Bar Briefs, and that he be made an honorary member of this Association.

The motion was seconded, duly put, and on a rising vote unanimously adopted.

PRESIDENT HILDRETH: That completes the work of this session.

This evening at the Masonic Temple the annual dinner and entertainment will take place and you are all invited to attend.

The Bar Association now stands adjourned until 9:30 tomorrow morning.

TUESDAY, AUGUST 11th

Morning Session

PRESIDENT HILDRETH: We have considerable business to dispose of today and I want to expedite matters as fast as I can with due consideration for matters that are important to be taken up here.

I made an announcement that all those who had badges are invited to the closed meeting today at the Country Club. All they need as a passport is their badge. They will be entertained out there by some arrangement that has been made by that organization.

Is the committee ready to report on local organization?

On Press and Public Information?

SECRETARY MCBRIDE: I have nothing on them.

PRESIDENT HILDRETH: On Public Utilities?

SECRETARY MCBRIDE: None, the chairman is ill.

PRESIDENT HILDRETH: Modification of the jury system—is the Honorable John Moses ready to make his report?

MR. MOSES: We are ready to report, Mr. President.

REPORT OF COMMITTEE ON MODIFICATION OF THE JURY SYSTEM

Largely due to the extremely cold weather, the inability of the members of the committee to get together for a meeting, and perhaps in some small measure due to the somewhat distracting position in which your chairman has found himself for the past several months, your committee is not in a position at this time to present any new matter for the consideration of this association. The very thorough, scholarly and able report of Judge Grimson's committee, presented at the meeting of the association held at Grand Forks last year, contains certain recommendations to which we desire to call particular attention at this time. It was the recommendation of that committee, consisting of Judge Grim-

son, Honorable H. C. DePuy and Judge Wartner, that certain matters be referred to the Executive Committee for action, and that certain matters be referred to the Legislative Committee of this Association. Your committee is not informed at this time as to whether these recommendations, unanimously passed at the 1935 session, have been carried out. Obviously, the Legislative Committee has not had an opportunity to take action. We believe that these recommendations should not be lost sight of, and that the action taken last year should be ratified at this time, and we therefore incorporate in this report, the recommendations made by the 1935 committee:

Recommendations:

I.

That the Executive Committee of this Association have prepared a brief, simple statement of how a jury should be drawn and of the importance of jury duty; that it attempt to secure the inclusion of such statement in any forthcoming township manuals and the printing and circulation of said statement amongst the various boards selecting jurors in the state.

2.

That the Executive Committee prepare a circular for trial jurors acquainting them with their duties and the importance of their work and secure the printing thereof for circulation to prospective jurors.

3.

That the legislative committee of this Association be instructed to prepare and present to the legislature an amendment to Section 7 of Article 1 of the Constitution to permit the legislature to provide: first, for verdicts by less than a unanimous decision; second, by jurors of less number than twelve in misdemeanor and petty offenses and cases involving less than $500.00 or some set amount; and third, the right of waiver of jury trial in both civil and criminal matters upon the consent of both parties.

4.

That the legislative committee be instructed to prepare and submit to the legislature, the necessary legislation to provide for alternate jurors in protracted civil cases and for the formation of trial districts in accordance herewith.

We further suggest that the committee be continued.

Respectfully submitted,

THOS. J. BURKE,
J. F. X. CONMY,
F. J. GRAHAM,
GEO. M. PRICE,
JOHN MOSES, Chairman.

MR. MOSES: This report is respectfully submitted and I now move the adoption of the report.

Duly seconded, put, and carried unanimously.

PRESIDENT HILDRETH: I would like to have the committee on Municipal Law be ready to make a report this morning.

MR. ADAMS: Mr. President, our report is ready.

REPORT OF SPECIAL COMMITTEE ON MUNICIPAL LAW

Your special committee on Municipal Law submits the following report:

At the request of the special committee on Municipal Law of the American Bar Association this committee, for the North Dakota Bar, was appointed by its President last October.

At the annual meeting of the American Bar Association held in 1935, a "Section of Municipal Law" was organized, the purpose of the section being to provide a common meeting ground and impartial forum for all members of the Bar engaged in dealing with problems of Municipal Law in any capacity, either as attorneys for counties, cities, townships, villages or other public body, having in mind particularly the discussion of (a) local tax problems; (b) relationship between Federal and State projects and municipal ownership of utilities; and (c) re-organization by consolidation or otherwise of county and local government. The chairman of this special committee has had no occasion in his practice to become familiar with the problems of Municipal Law and there has been no opportunity for the members of this special committee to meet and discuss its problems. The writer, however, had a great deal of correspondence and several conversations with Matt W. Murphy, City Attorney of Fargo, and a member of this committee, who has just passed away as this report is being put together; and most of the suggestions hereafter outlined were formulated by Mr. Murphy.

Since this is the first year the committee has been working, its endeavors have been limited to a preliminary survey of the field and the drafting of a tentative program, which it is hoped future committees on Municipal Law may bring to a more definite conclusion, and in this connection it is obvious that the work of the committee will be of only academic interest and our efforts will be barren of accomplishment, unless the legislature is prevailed upon to adopt those laws found necessary to correct existing evils or to improve and modernize existing forms of local government.

Mr. Murphy and the writer concur in the idea that one of the really imperative needs in the State of North Dakota is

"A Home Rule Charter for Cities and Villages"

We call attention to the fact that ever since Territorial days municipalities have operated under special powers granted by the legislature and that there is now a great accumulation of statutes

on the subject, and as municipalities are creatures of the legislature and cannot exercise any powers except those expressly conferred by legislature or arising by implication there has been no elasticity in their functioning.

Some of the states, and particularly Wisconsin, have cleared away the under-brush of special legislative powers and adopted a general statute granting to municipalities the authority to adopt such ordinances, establish such regulations, and perform such local functions of government as may be consistent and in furtherance of the safety, health, good order and general welfare of the community; and it may be said that so far as Wisconsin is concerned this law is long past the stage of experiment and the results have been on the whole exceedingly satisfactory. If adopted in North Dakota, for instance, the presumption would be in favor of the authority of the municipality to act, and the test imposed by the court would be whether the challenged act, regulation or ordinance, was fairly within the general subject matter above mentioned.

Your committee believes that this matter is a very pertinent subject for inquiry by the State Bar Association and while the committee does not feel at this time that it is warranted in recommending the adoption of such a home rule charter it does believe that it should be the first matter on the agenda for another year.

Other important matters which are live and calling for careful study and doubtless later corrective legislation, are the following:

1. Legal problems affecting phases of Federal Public Works.
2. Re-organization and consolidation of units of local government.
3. The model real property tax collection law.
4. Rental charges for use of public streets as a right-of-way for distribution systems, poles, wires, etc., of public utilities.
5. Permissive right to pay taxes and assessments, both of real and personal property, in monthly installments.

Should the succeeding committee, if any, or the Bar Association finally reach the conclusion that remedial legislation is advisable on any of these subjects the next problem would be to convert the desired end into effective legislative action, and in that connection we suggest that the committee, after reaching a definite conclusion on this or any other subject of study, might properly summarize its conclusion in the form of a brief statement of the problem and its suggested solution, this to be submitted to the Executive Committee of the State Bar Association or the Association itself for consideration and approval, and when approved copies might be forwarded in due time to the proper committees of the House and Senate of our legislature.

This might not bring about the desired legislative action but if bills on the subject were pending your committee feels sure that the legislative committees would welcome such interest, information and recommendations. If the matter were followed up by the legislative committee of the State Bar Association and through members of the Association who happened to be members of the legislature good results might follow. It is certain that in the past important legislation adopted in this state has been largely a result of the study and endorsement thereof by lawyers, individuals and groups, as, for instance, in the case of the uniform negotiable instrument act, the uniform sales act, and the act prescribing rules for the administration of trusts.

Your committee is cognizant of the fact also that there is in North Dakota a League of Municipalities, of which approximately 100 cities and villages are members, and this League has been in active operation for a number of years, and can fairly be said to represent the views of the cities of the state. It has a committee on Municipal Law composed of City Attorneys, who are working along parallel lines with this committee. Should this committee be made into a permanent committee as a part of the Section of Municipal Law of the American Bar Association we suggest that the committee cooperate and exchange views with the similar committee representing the League of Municipalities, particularly in view of the fact that the individual members of the two committees are all members of the State Bar Association and can readily meet on common ground.

The only recommendation which your committee makes is that the State Bar Association provide for a permanent committee on Municipal Law, and that every effort may be made to improve and modernize our existing system of local self government.

Respectfully submitted,

S. D. ADAMS, Chairman.
HENRY G. OWEN.
J. J. KEHOE.

The undersigned concurs in the recommendation made by the report, but does not concur in the discussion.

C. L. YOUNG.

MR. ADAMS: I move the adoption of the recommendation that a permanent committee on municipal law be organized in the association.

Motion duly seconded, put and carried.

PRESIDENT HILDRETH: We will listen now to the report of the Executive Committee.

SECRETARY MCBRIDE: Your Executive Committee to whom was referred a resolution adopted at the 1935 meeting of the Association, and appearing on page 41 of the December, 1935, Bar Briefs, that an appropriate committee of this organization be ap-

pointed by the Executive Committee for the purpose of cooperating with the efforts of the American Bar Association in coordinating the Bar, and that they appropriate the necessary funds to send a delegate to such meeting, or meetings, as may be held, have had the same under consideration and report that your Executive Committee recommends that when the American Bar Association has formulated and agreed on the plan of re-organization and co-ordination of activities and have re-organized, that then your Executive Committee be given authority to name a delegate, or delegates, to the American Bar Association to consider and adopt the same.

PRESIDENT HILDRETH: Gentlemen, you have heard the report coming from the action of the Executive Committee, and also heard the President of the American Bar Association outline the plan for the re-organization of the American Bar throughout the country.

That question, of course, is to be threshed out. We thought we ought to anticipate to a certain degree what should be done. I think the report made by the select committee of the Bar Association is good and that the matter of the re-organization will go through. Therefore, the Executive Committee, in view of the fact that we only have an annual meeting, made this written recommendation to the State Bar. Now as to whether they ought to have the power to select under the re-organization plan of the American Bar Association representatives of the Bar from this state — those who favor the adoption —

MR. BRONSON: I don't quite fully understand it, but maybe perhaps I do. Now for general information, the first day of the American Bar meeting at Boston, they vote on this plan of co-ordination, and if it be adopted that day, as is anticipated by the report given generally throughout the country, the contingent members of the House of Delegates under the plan will be your state delegate now functioning as a member of the general council, of which I am at this time general council member from North Dakota, and your president of your Bar Association to be selected at this meeting; for instance, the vice president will be Charley Murphy, that is to say if this plan is adopted on the first day of the meeting as is anticipated in this House of Delegates, which consists of all members of the General Council from each of the states in the union, plus the Bar Association delegates from the various Bar Associations of the country.

So for the first meeting on this, you anticipate at this meeting the selection of a delegate, the delegate of the Bar Association at that meeting will be Murphy, for instance, the vice president, if selected. If I understand, Mr. President, this doesn't do anything other than select — —.

PRESIDENT HILDRETH: That is correct. In other words, as this matter is taken care of down there in Washington, then the Executive Committee will have the power to conform to the mat-

ter in which they propose for the selection of delegates. You are entirely right, being upon the general council, you will be a representative and Mr. Murphy will be a representative, but a question might arise as to whether or not we ought to prepare to anticipate the adoption of this, in view of the fact that we only meet once a year. What are your views in regard to that?

MR. BRONSON: The resolution along that line appears to be appropriate. It may be before the next annual meeting occurs, you will have had a State Bar Association and it may be before that next annual meeting occurs, the Executive Committee may have made a recommendation in its report as to the method of selection. The resolution is appropriate and doesn't go against the plan of the national organization.

PRESIDENT HILDRETH: Not at all. Is there a motion to adopt this report before the house.

MR. MURPHY: I so move.

Motion duly seconded and carried.

MR. BANGS: I would like to move a special order of business. There are a number of lawyers here from out of town who want to be leaving this afternoon. I see you have on the program election of officers set for four o'clock. I would like to move for special order of business that the election of officers be had at two o'clock.

PRESIDENT HILDRETH: Well, we have followed the plan here in our program as a matter of general concern, an outline of business. I have no personal objection to it.

Motion duly seconded, put and carried.

Now gentlemen, it gives me a great deal of pleasure to introduce to you the next speaker, Emanuel Sgutt, a soldier of the World War, who will now address you.

"SOCIAL SECURITY — SOMETHING OF ITS HISTORY"

MR. SGUTT: Mr. President, Members of the North Dakota Bar Association:

The last Congress enacted a measure which is now the cause of considerable comment and controversy — The Social Security Act. This law presents many angles of interest to the lawyer. First, of course, there is the question of constitutionality which, no doubt, will be raised. Then lawyers will find that its provisions affect many of their clients, both as employer and employee. Further there will come the usual legal questions that arise relative to the administration of any such statute and with the passage of the state legislation required to conform with and complement the Federal Act.

All of these questions will have to be considered when the time comes and I am not going to try to solve them for you in a

few minutes this morning. Further, I am not entering into any controversy and this paper is not an argument, either for or against the Act, nor is this a study of the provisions of the law. Every lawyer will want to do that for himself, anyway, with particular application to the question confronting him at the time. Even the issue of constitutionality will be left to the Supreme Court of the United States to struggle with, without the benefit of my assistance.

To you who are looking for a detailed and comprehensive analysis of the law the next few minutes, are going to be very disappointed. This is an attempt to reach the idea back of the law. As ideas are usually vague, indefinite and often illogical, this paper will, no doubt, partake of the same characteristics.

After all, any law is but the expression of an idea — the putting into words of an ideal or a philosophy. To fit the vague, indefinite spirit of a thought into the fixed form of hard black print is difficult and not always successful. That is why courts and lawyers are needed to trim off overlapping edges and to fill up vacant spaces. To do that with competence — to know the real law — it is advisable to study its philosophy as shown through its history.

History traces the philosophy of Social Security back to antiquity. Every once in a while a new name is tacked to an ancient situation and it is immediately hailed as the birth of a modern theory. To read the newspaper headlines it would seem that the idea of Social Security was the particular and peculiar product of this day and age. The present-day politicians of all parties, modern economists and advanced political scientists, all act as though Social Security was a new born babe just discovered on their own doorstep — and to carry a poor helpless figure of speech further — many of them don't know what to do with it.

Of course Social Security is a broad all embracing term and from a historical standpoint must be so considered. When we speak of Social Security historically, we cannot accurately mean only old age pensions or unemployment insurance. These are only certain phases of the entire subject. They are merely present day attempts at dealing with a part of the world-old problem of poverty. Every conscious effort towards controlling or modifying economic conditions and social relations forms part of the plan of Social Security. Such efforts, of course, commenced with the beginning of civilization and when they end so will civilization, or Utopia will have been attained.

When man left his place of abode in treetops and decided to live in caves, it was the dawning of the idea of provision for the future. He had come to fear beasts and bad weather and this fear drove him to the need of providing against them. He began to worry about the future and sought the protection of holes in the hills where he could accumulate food, skins and weapons.

His intellectual growth, which one writer has called, "the unfortunate but inevitable result of human civilization," continued

to create new causes of fear while he was trying to create for himself greater safety and security. Unfortunately, or perhaps, fortunately, man was endowed with the power of imagining the future. As he developed, this power increased and so did his anxiety as to the future. Today the greatest fear of man is not of present bodily harm but of the possible loss in the future of what he considers necessary to a satisfying existence. As the thing which our civilization has made essential to existence is the possession of money to buy food, shelter and clothing, the loss of money is feared as the loss of security. So it was fear that gave rise to the idea of Social Security at the beginning of civilization and it is fear that has today, accelerated recently by the devastating experience of the depression, given impetus to Social Security legislation.

Later expression of the philosophy of Social Security is found when the individuals and families formed into tribes. As they organized, there was recognized a duty on the part of the well-to-do of the community to assist those of its members who were less fortunate. Thus arose the practice of giving to the sick and crippled a share of the hunt or the spoils of war. There exists today in some European countries the ancient tradition that a man might harvest his field only once, the second gleaning being for the poor.

As soon as mankind learned to write, the principles of such traditions were coded and made part of the written law of the land. A French expedition digging in Southern Persia about 30 years ago discovered three pieces of black rock which when joined together made a block about eight feet high covered with curious hieroglyphics. Investigation and translation revealed this to be a copy of the famous code of Hammurabi, the sixth king of the dynasty of Babylon, who reigned about twenty-two hundred years before Christ.

The extent and scope of this legal code used over 4000 years ago is astonishing. It provides for minimum wages and shows that even our present moratorium presents nothing new to the theory of Social Security. Section 48 of the Code of Hammurabi reads as follows:

> "If a man owe a debt and the storm god inundate his field and carry away the produce, or thru lack of water, grain have not grown in the field, in that year he shall not make any return of grain to the creditor, he shall alter his contract tablet and he shall not pay interest for that year."

Apparently flood and drought were present then as now and perhaps we may wonder about the reality of civilization's advancement when today we are using the same methods of dealing with these plagues as were used over 4000 years ago.

History records many bold and revolutionary attempts to provide Social Security in ancient times. When Lycurgus became

the ruler of the City of Sparta in Greece, Plutarch notes that he found "the city overcharged with many indigent persons".

As a first step towards eradicating poverty Lycurgus took over all the land and redistributed it equally among the people. He had all of the citizens eat together meals furnished by the government. These meals, paid for out of the public treasury and prepared in such volume, necessarily were simple although no doubt nourishing. It is from this that we have the tradition of the simple, plain Spartan life.

Lycurgus also tried to divide all of the **personal property** among the Spartans. This was harder to find and so harder to do. He therefore hit upon the stratagem of making it valueless by stopping the currency of gold and silver coin and replacing it with iron money. The value of the iron currency was made so small that an ordinary transaction would take a room full of it and a yoke of oxen to move it. This made wealth unpopular but also ruined trade and industry.

Common meals were served by the government of Crete also. Plato in Chapter 21, Book 6 of his laws, says that they were established with the object of keeping the citizens in military trim or to protect them from want and that he considered that practice to be a divine necessity and an institution of the ideal state.

In Athens, under the leadership of Pericles, a public works programme was devised to relieve unemployment. And so the quest of Social Security gave the world those famous structures known as the Parthenon, the Odeum, the Nike-Temple, the Gold and Ivory statue of Athena and others of like nature.

The questions of unemployment and Social Security were of considerable importance in the history of the Roman Empire. At the beginning of the sixth century, Rome abolished the king and became a Republic headed by two elective officers called Consuls. These Consuls, however, were elected from and by the wealthy land owners and the nobility who formed a class called the Patricians.

The others, the Plebians, had at first no word in the government, but it was from them that the far flung Legions of the Roman army were recruited. Rome was then in the midst of its ambitious scheme to spread its Empire over the entire globe. As their foreign war policy became more extensive, their need for soldiers became greater. In order to obtain these soldiers, the Patricians found it expedient and desirable to make political concessions to the Plebians. So as Rome expanded its territories, the rights of the Plebians increased. First the Plebians were allowed to fill minor offices. Then they were allowed the appointment of one Consul and when Roman power reached its height the Plebians were on a political parity with the Patricians.

Then history once more proved itself and military success abroad caused economic trouble at home. From the conquered

territories vast numbers of slaves were sent back to Rome. Slave labor became plentiful and cheap and soon all industry, most of the farming and all domestic labors were performed by slaves. Educated prisoners of war were made slaves and used as teachers and there were many instances of slaves, who, having proved themselves adept at business, acted as their master's agents in handling his affairs. The result was that when these Roman Legionnaires returned from conquering the world, they found that their places at home had been taken by the men they had vanquished and sent back to Rome as slaves.

Great poverty and distress resulted and Rome was filled with unemployed Plebians. The Plebians now had the vote; however, to keep in office it was necessary that they be kept in good humor. One of the consuls elected by the people in the year 123 carried out a measure giving a certain quantity of corn to the people every month at the expense of the State and also caused long roads to be constructed throughout Italy in order to give employment to the workless. This was followed by grants of oil and wine. At the time of Augustus, 320,000 persons received grants of corn or other aid from the State; and it is estimated that Nero gave away during his reign, nearly one hundred million dollars from the Public Treasury for food.

The politicians of that day not only conceived the idea of aiding the physical distress of the people, but also of distracting their minds and keeping them content by presenting free government amusement. This was the purpose of the circuses, games and gladitorial contests so well known in Roman and Grecian history, and of which our present-day Olympics, now in progress, are the survivor. And perhaps the same purpose had some part in the presentation of this year's Olympics with such elaborate pomp and ceremony by the German Government.

During this time in continental Europe, government had not yet developed to where the State, as such, assumed any responsibility for either preventing or relieving destitution. It was the time of Feudalism. The obligation of the serf to the lord implied a corresponding right to care and maintenance. It was also the time of the great growth of the church. The church had always regarded charity as one of its fundamental principles and as it gained in strength there was left to it a great deal of the care of the poor. Many orders of nuns and monks were instituted for that purpose.

Then came the breaking up of feudalism. At the same time came the Reformation with the breaking up of the mother church into the different sects, resulting in the dissolution of the monasteries. This left the poor in the hands of the government and it became necessary for the state itself to do something about it.

Apparently human nature has not changed much for the first reaction was to pass a law against it. In most European

countries barbarous penalties were set by law for begging. People were imprisoned and tortured for failure to pay debts. Such laws being direct ancestors of our present North Dakota Statute providing for execution against the person of the judgment debtor in certain civil cases. In jolly old England, if a laborer out of work left his place of birth looking for employment, by statute, he was liable to whipping, branding, burning or having his ears cropped.

Strange as it may have appeared to them then, even these stringent laws did not abolish poverty, and in 1572 England found it necessary to pass a law providing for taxation for poor relief. This lead to the Elizabethan Poor Relief Act of 1601, which definitely established the duty of each local district to take care of its own poor. Most of our American poor relief laws come from this Act of 1601 and, it must be said, have not come very far. In England poor relief legislation, once started, developed so quickly that under the Speenhamland at the early date of 1795, all laborers, whose wages fell below a certain level, were granted an allowance from the public treasury.

Up to this time the approach was towards poor relief and **not prevention.** Little was done to meet the problem at its inception. All effort was directed at picking up the sheep after they had fallen over the cliff, rather than building a railing around the edge of the cliff.

It is interesting that the first real step towards preventive relief, by way of Social Insurance, was made by one of the hardest, most conservative and despotic men ever known to European politics — Bismarck, the Iron Chancellor of Germany.

It was while Bismarck was chancellor that German manufacturing attained its phenomenal growth and brought with it a strong labor movement under the leadership of such socialists as Marx and LaSalle. Just as the Romans gave free meals and entertainment to appease the Plebians, Bismarck played smart politics to satisfy the followers of these men. He had Emperor William I give his famous message of November 17, 1881, stating "That those who are disabled from work by age or invalidity have a well grounded claim to care from the state," and there was forced thru the Reichstag, despite cries of socialism, compulsory health, old age and accident insurance.

This innovation was taken up by other European countries. In England, at the opening of the Twentieth Century, a Poor Law Commission was appointed. The minority report, which was then disregarded, urged the abolition of all the existing poor laws and the substitution of Social Insurance. This minority report apparently gained in favor for in 1911, Parliament passed England's National Insurance Act which Lloyd George subsequently developed in a comprehensive Social Insurance programme. By 1930, practically all of Europe had some form of working men's

compensation, health and old-age insurance provided for by the Government.

Social Security legislation did not come so soon in the United States, because there was not felt the need for it in the early days. As our frontiers receded, and our great wide open spaces of free land and natural resources began to disappear, legislation in that respect began to appear over here also. Workingmen's Compensation Acts were the first compulsory insurance laws to appear and are now enacted in practically every state. In 1914, Arizona passed the first old age pension law. It was declared unconstitutional, but was successfully re-enacted.

The World War interrupted the progress of such legislation, but at the same time gave this country an experience in Federal Government Insurance covering the members of our military forces.

Thru drives originating at headquarters and conducted by officers, this insurance, altho voluntary in name, was in fact compulsory. There were very few who did not feel obliged to sign a blank authorizing the Government to deduct from their magnificent wage of $30.00 a month sufficient to protect the Government against compensation payments for themselves and others who were killed or collected and sent home in a basket from the war that was to end all wars.

After the war came that period when apparently all poverty had ceased. Employment was no problem because everybody was getting rich on the stock market without working. And then came the dawn — the cold grey dawn of the depression. It was found that the poor were still with us — not only the poor who were unable or unwilling to work, but millions who could not find work. Necessarily this gave great impetus to relief legislation. At the time of the passage of the present Social Security Act, 31 states and 2 territories had old age pension acts, while 8 states and the District of Columbia had unemployment insurance laws.

It would seem that government insurance as a means of promoting Social Security is here whether we like it or not. We may not like scrambled eggs and rail against the cook who makes them and the waiter who serves them, but we cannot unscramble them. No matter who is elected President this fall or what party is in power, there will be some form of Social Security thru Federal Aid as that promise has been made a special plank in the platform of every party. President Roosevelt sponsored unemployment insurance even while Governor of New York at a conference of Governors held in Salt Lake City back in 1930, and no doubt if elected will continue to do so. Governor Landon, not long after his nomination for President, called a special session of the Kansas Legislature and in his message urged Constitutional changes designed to clear the way for full participation in the Federal Secur-

ity Law. That same day he issued this statement to the press, in which he said:

> "Our natural humanity and the employment program of a great industrial civilization requires the Community, **through its government,** to protect those who by reason of age or other misfortune may have claims upon us."

The American mind has the tendency to ignore issues completely and then all of a sudden embrace enthusiastically all sorts of hasty and ill-considered schemes. Now, no doubt, there will probably be a veritable flood of Social Security legislation — in Congress to change and perfect the National Act — in State Legislatures to obtain the benefits of the National Act.

Now we all know the conventional way laws are made. Some one gets a friend in the Legislature to introduce a bill. Once the idea is started, several bills are introduced, all covering the same subject and all usually imperfectly drawn. A commission is appointed to investigate. It does and makes voluminous reports to which no attention is paid. Time goes on, the idea spreads, finally a political situation arises in one particular state where the passage of the bill means votes. The first bill handy is seized, conferences are held and compromises made. Finally the bill is passed having the label but often quite different as to context.

Once the bill is passed, the news spreads to the other states like gossip thru an old ladies' home. Why should New York be ahead of North Dakota? If it is good enough for them it's good enough for us. So we lift the New York statute bodily and made it part of our code without regard to fundamental differences between the states. Sometimes, the strangest errors in legislation spread nationally because it is easier to copy than to study.

It is the lawyer who will be called on to assist in this legislation. The lawyer has always been the adjuster and regulator of human rights and relationships and his knowledge and experience as such will be needed in dealing with the great problem of Social Security.

It may be that this is a problem that cannot be completely solved. It is a difficult task to adjust this man-made civilization of ours to the complete satisfaction of every one. We have gotten ourselves into our present situation. Can we now undo it? We say what man has done, man can do. But it does not necessarily follow that what man has done man can undo.

However, we can try. And thru wise understanding and careful action the members of the Bar, always the leaders in every movement for human welfare, may perhaps be able to assist their fellow citizens to a greater measure of life, liberty and the pursuit of happiness.

PRESIDENT HILDRETH: Gentlemen of the Bar: This very historical and scholarly address is ordered filed and made a part of our records to be printed in our annual.

Gentlemen, we will now go into executive session. This doesn't exclude any member of the State Bar Association. It is a matter of considerable importance. I want to call on Mr. Knauf for a report in regard to some matters.

MR. KNAUF: Mr. President and Members of the Bar:

I am chairman of the Unauthorized Practice of Law Committee and submitted a report sometime ago, reporting on the appeal in the Merchants National Bank & Trust Company case, which at that time had not been decided, but which has been decided since that time. This decision differs from the decision of the lower court but defines the practice of law.

There may be a petition to modify the decision in a few minor matters, but the decision on a whole is a well defined proposition as to what constitutes the practice of law, and if modified in a few particulars, probably will be acceptable throughout the Bar. As to whether or not that petition will be filed, the committee has not had time to study over thoroughly but will be determined a little later.

In connection with the unauthorized practice of law there was also pending a prosecution against W. C. Rowerdink, who is manager of the Business Service Collection Bureau of Bismarck, who continued his practice under another name, and which he advertised as successor to the Business Service, but which is pending before Judge McFarland. The Judge has not yet heard the matter but promises to hear it very soon.

There is another matter I would like to present to the Bar, which is in regard to the activities of Mr. Townley. The report of Judge Ellsworth, who we employed as investigating attorney for us — and I would like to refer this matter to your future committee for their action and to the Bar, — if you bear with me I would like to read the report of Mr. Ellsworth:

(Executive Session — Report Filed With State Bar Board.)

Now there is another matter I want to present to the committee. This Mr. Burn is acting as one of the agents. It is only lately he had a falling out with Mr. Townley, and so to speak, turns State's evidence, and we got facts from him. I wrote a number of lawyers where I understood Mr. Townley was conducting his activities, trying to get in touch with the meeting to be held in order to get a stenographer to attend the meeting. I had never been able to get anyone who had talked to him personally, and those who had taken notes.

I have two cases referred to me by Mr. Bangert along the same lines but when it came to connecting the thing up with Mr. Townley, was unable to do so.

A meeting was advertised at Medina, North Dakota, thirty miles west of Jamestown, and I at that time was sick but I took the stenographer out there who reported his speech on that occasion. Now I would like to present this, which is quoted verbatim from him:

(Executive Session — Report Filed With State Bar Board.)

May it please the bar this speech was taken, the words of Mr. Townley about the time this evidence was coming to your committee, and connected up with it, there occurred to me a proposition as to whether or not injunctional proceedings could be had unless something was going on, and in other words, if the proceedings were stopped and held in abeyance, whether or not the committee should not defer action.

I have, therefore, as chairman of this committee: first, I wanted to be sure of the evidence; second: the proposition of the injunction under these conditions, the statement that everything was held up came to my mind. Also, I felt this, the evidence that I have gathered in this report together with the copy of Mr. Townley's speech at this time should be referred to your succeeding committee on the Unauthorized Practice of Law.

I will say to you, too, that the incoming President of this Bar criticized somewhat the expense we have had and wrote me a personal letter in which he sort of doubted the wisdom of the prosecution of these cases, or something to that effect. If there is any question about this letter, anybody can read it. However, regardless of that, I deem that the committee should have the evidence together, and while I had written many lawyers to get, if possible, a stenographic report of Mr. Townley's speeches and activities, not until the falling out of Mr. Burn had we procured very much direct evidence.

I also wish to say that your committee has had this up with Mr. Lanier, United States District Attorney, inasmuch as a Federal Law is involved, asking the action of the Federal authorities in connection with the committee. So far they have done nothing to assist us however as far as I can see it.

I wish to say I would move that this report and extract of Mr. Townley's speech and the other evidence which I have selected and evidence available, be turned over to your committee on Unauthorized Practice for their action under your new administration, as they shall deem fit.

MR. LACY: Second the motion.

PRESIDENT HILDRETH: I don't think there is anything of greater importance to the Bar of the country and the Bar of the state than this unlawful practice of law. If I may be permitted to say it, I have paid considerable attention to this subject during the time, during the last five years, and I am going to make this warning to my brethren here today, that unless something is done to prevent this unlawful practice of law, it is going to abso-

lutely destroy the morale of the Bar, and from a professional standpoint — I don't want to say anything harsh, it will destroy, in time, the Bar itself.

Therefore I trust that some action can be worked, some plan worked out that will end, in my judgment, one of the most insidious of all matters that attack the Bar, this unlawful practice of the law.

The motion was made and seconded to adopt the report; those who favor the motion will say aye. Carried.

Does the State Bar Board have any report to make?

REPORT OF STATE BAR BOARD

In accordance with an established custom this Board submits for the information of the members of the Bar a report for the year ending June 30th, 1936.

As a result of the only examination conducted during the year thirty-five applicants were passed. Thirty-two of these were admitted to the Bar immediately, one attorney was admitted during the year on motion and one was denied admission.

More than the usual number of complaints of professional misconduct were filed during the year and referred by the Supreme Court to the Board.

The following summary is indicative of the Board's activities:

Reprimands administered by the Supreme Court as a result of disbarment proceedings	3
Reprimands on recommendation of Board	1
Disbarment proceedings pending before the Supreme Court for decision	3
Disbarment proceedings pending before Referee	1
Complaints dismissed by Supreme Court on recommendation of the Board	6
Investigations in process	7
Members of the Bar stricken for non-payment of license fees	2
Members disbarred, reinstated by Supreme Court	1

As the expenses of the board during the year were low as compared with the preceding year, there has been a considerable increase in moneys on hand. The financial report for the year is as follows:

Balance from all sources, June 30, 1935		$ 4,205.45
Collections from all sources, July 1, 1935 to July 1, 1936:		
Licenses	$5,400.00	
*Examination Fees	700.00	6,100.00
		$10,305.45
Total Disbursements July 1, 1935, to July 1, 1936		5,139.34
**Balance July 1, 1936		$ 5,166.11

*Not available for general disbursement.

**Included in the above balance is the amount due the State Bar Association for period covered by this report but not yet vouchered, 193 licenses at $5 each $ 965.00

Distribution of Disbursements:

State Bar Association	$ 2,585.00
Salary and Expense of Secretary	350.35
Per Diems and Expense of Members of State Bar Board	649.09
Attorneys Fees and Expenses in Disbarment Proceedings	217.87
Postage	96.91
Supplies	48.35
Printing	81.89
Clerk Hire to Secretary and Members of Bar Board	228.00
Miscellaneous	5.35
To Committee on Unlawful Practice	876.53
Total	$ 5,139.34

Respectfully submitted:

C. L. YOUNG, President,
C. J. MURPHY,
J. P. CAIN,
State Bar Board.

PRESIDENT HILDRETH: Mr. Newton, can you state in a general way how many lawyers in this state have failed to pay their fees under the provision of the law?

MR. NEWTON: There are probably fifty delinquent at the present time. Of course, they are certified to the Supreme Court before the year is up on order to show cause.

PRESIDENT HILDRETH: If there is no objection to this report, it is approved as read and ordered filed.

The Fee Schedule, I think Mr. Soule has a report.

MR. SOULE: Mr. President and members of the North Dakota State Bar Association:

REPORT OF FEE SCHEDULE COMMITTEE

Mr. President and Members of the North Dakota State Bar Association:

To the North Dakota State Bar Association:

Your committee on Fee Schedule reports as follows:

During the year we had but one complaint. It was from one of the older lawyers relative to the cutting of fees by a younger member of the Bar in his town. We had one of our former presidents contact this younger member and explain to him the necessity of making proper charges for his services. We have heard nothing further so can but assume a satisfactory adjustment was made.

We suggested to the State Bar Board that they print our Fee Schedule as a section of the list of Licensed Attorneys they publish each year. The State Bar Board gave our suggestion serious consideration but finally came to the conclusion they could not do this because their pamphlet is more or less of an official publication and also has a circulation outside of members of the Bar. Your committee agreed with their conclusion. It does, however, seem to us that our Fee Schedule should be printed each year and distributed among all members of the Bar. The publication should be on about the same size sheets as the list of Licensed Attorneys so that it may be kept with that pamphlet and not laid aside and lost.

It has been reported that some of our courts require a proceeding in the nature of an Order to Show Cause where possession of personal property is sought before judgment is entered. This is an "extra-Judicial" proceeding and is usually so informal that the attorneys involved have, in many instances, found it difficult to collect proper fees even though the hearing required more time and effort than an actual trial of the issues involved. It might be well for this Association to consider whether or not a definite fee should be set.

Other members have written and expressed the idea that the courts have been loathe to assess motion costs even though it is very apparent the motion was made merely for the purpose of delay. Your committee suggests that the Association express itself on this point and if in favor of the assessment of motion costs in such instances, that our secretary be authorized to convey our conclusion to the Courts of this state.

We found it impossible to arrange a meeting of our committee. We, therefore, recommend that from henceforth this committee be appointed from the same city or section of the state. It will then be possible for the committee to meet from time to time during the year and do some constructive work. The committee under such a plan should be appointed each year from different sections of the state and each section thereby given an opportunity to express its ideas in regard to fees. It might also be

advisable to have a fee committee appointed by each of the Judicial District organizations so that the state committee may not only confer with these district committees but also refer to them complaints such as are mentioned in the first part of this report. The members of these state and district committees should also be prepared to answer questions and counsel with the other, and particularly with younger members of our Association as to the proper fees to charge.

Your committee lastly reports that it has been handicapped by the absence of data and figures on present day fees. Some of our members even went so far as to inform us they considered them so non-existent that a discussion of them is entirely too academic for a practicing lawyer. We, therefore, found it necessary to delve into the old files and records of our Association to obtain the material contained in this report. We close with the hope that the next committee will not be so handicapped.

Respectfully submitted,
JOHN A. LAYNE.
C. N. COTTINGHAM.
GEORGE SOULE.

I move the adoption of this report.

Motion duly seconded, put and carried.

PRESIDENT HILDRETH: Mr. Cain, are you ready to make a report on legislation?

MR. CAIN: No, not at this time.

PRESIDENT HILDRETH: Is Mr. Murtha present in the room? I will be glad to have you make a report.

REPORT OF COMMITTEE ON AERONAUTICS LAW

MR. MURTHA: Mr. President, Distinguished Guests, Members:

The Committee on Aeronautics Law of the North Dakota State Bar Association was created last year for the purpose of conforming to the pattern of committee organizations of the American Bar Association inasmuch as the latter body has a subcommittee covering that particular field.

It was felt that aerial navigation is increasing by leaps and bounds and that it behooves us to keep in step with its progress by gradually building a body of uniform aeronautic law. It was noted that much of the confusion and contradiction now existing in the field of automobile law was caused by a failure on the part of the various state legislatures to pass uniform legislation on that subject.

Two parts of the Uniform Aeronautical Code have thus far been adopted and promulgated by the conference on Commissioners on Uniform State Laws.

These were submitted to the conference by a sub-committee dealing specifically with that subject.

These two parts of the Code are:

(1) Uniform Aeronautical Regulation Act.
(2) Uniform Airports Act.

Both have been approved and recommended for enactment in all the states by the National Conference of Commissioners on Uniform State Laws at its Forty-fifth Annual Conference at Los Angeles in July, 1935, and approved by the American Bar Association.

The Uniform Regulation Act has been passed by the States of South Dakota and Minnesota.

The Uniform Airports Act has been adopted by the State of Georgia.

The sub-committee of the American Bar Association is working on a third part of the Code dealing exclusively with the substantive law of flight.

It appears that the courts have been wrestling with the rules which apply to the determination of liability for accidents of all kinds and it would seem that until a proper uniform Act can be adopted, the best thing for any state to do is to let this part of the subject continue to be handled by the courts on Common Law principles.

DONALD M. MURTHA, Chairman, Fargo.
CLAIRE F. BRICKNER, Fargo.
JOSEPH M. POWERS, Fargo.
C. B. CRAVEN, Carrington.

MR. MURTHA: I move the adoption of the report.

Motion duly seconded, put and carried.

PRESIDENT HILDRETH: The resolution that was filed from Lisbon, the Third District, I will ask the Secretary to read the resolution for your consideration.

SECRETARY MCBRIDE:

WHEREAS: It has come to the attention of the members of the Third Judicial Bar Association that the Federal Farm Mortgage Corporation employs certain attorneys to represent it in connection with the foreclosure of its mortgages over large districts or territories: That in connection with such foreclosures clerks, agents and officers of the corporation prepare the Notices Before Foreclosure in the corporation offices at St. Paul, and cause the same to be served: That if the Notice is followed by foreclosure action the Summons and Complaint will likewise be prepared at St. Paul and made ready for the signature of the North Dakota attorney, and the North Dakota attorney has, in fact, no other connection with the preparation of such papers than that of signing the same and acknowledging execution there-

of: That after default occurs the Findings, Conclusions of Law, Order for Judgment and Judgment and Decree are all prepared in St. Paul and sent to the North Dakota attorney, who causes them to be presented to the Judge and Clerk for signature and entry:

AND WHEREAS: We condemn such practice as being unethical, detrimental to the legal profession and absolutely contrary to our theory of the practice of law.

AND WHEREAS: If the attorney, under such circumstances, reduces the amount of his fee it is unethical, and if he receives the full and usual fee in connection with such foreclosures the practice results in an added burden upon a governmental or quasi-governmental agency, either of which would be improper.

THEREFORE, BE IT RESOLVED: That this matter be brought to the attention of the North Dakota Bar Association; that the matter be immediately referred to some committee of the Association with instructions to send out a questionnaire to all attorneys reputed to be representing any of the so-called Federal agencies in foreclosures of mortgages or other liens, and that the following questions be submitted for answering:

1. What Federal Agencies do you represent in the foreclosure of mortgages or other liens?.....
2. Do you prepare and serve the Notice of Intention to foreclose? .....
3. Do you prepare the Summons and Complaint or are they prepared elsewhere? .....
4. Do you charge the regular N. D. Bar Ass'n fee?.....
5. If your answer to the last question is in the negative what arrangement do you have in regard to the fee to be charged? .....
6. If your answers to questions 2 and 3 are in the negative, is your fee reduced because you do not prepare the papers? .....
7. Have you authorized others to use or sign your name in connection with foreclosures? .....
8. If your answer to the last question is in the affirmative, who has that authority? .....

BE IT FURTHER RESOLVED: That if such questionnaire shall develop any improper practice on the part of any North Dakota attorneys, the officers and executive committee of this Association take appropriate action against any attorneys who refuse to desist in such improper practice forthwith.

PRESIDENT HILDRETH: What action, if any, gentlemen, do you desire to take on this report?

MR. MCINTYRE: Mr. President, it occurs to me that the question on the proposition suggested in the report might not be as practical as it appears; I am not one of the fortunate attorneys that gets the business from the Federal Banks, but I do think it would be embarrassing for those that do to answer the report.

I think it is entirely wrong to have the attorney act merely as an accountant, just sign his name and have some clerk in St. Paul transact the business. I would be inclined to the thought that this Association should go on record as disapproving the practice. I don't think the questionnaire would bring more information than what we have already. Most of us know it is being carried out as stated in the report. It might have greater results if this association went on record as disapproving the practice, unless we are entirely in error as to what is actually going on as indicated in the report.

I think it is common knowledge that the papers are sent out to these communities already prepared, and on the whole the attorneys are performing nothing more than just the routine act of signing their name. I would, therefore, suggest that we have some action by the association here, if they feel that way. I don't want to put it in the form of a motion, if the rest are not agreeable to it.

PRESIDENT HILDRETH: This matter is simply in the form of a suggested resolution. It is not in any sense a report but upon a proper motion being made here for its consideration it will be open for discussion.

MR. SHAW: I move the adoption of the report.

Motion duly seconded.

MR. WARTNER: I wish to make a substitute motion, that the report be referred to the Executive Committee for appropriate action as they deem fit.

Motion duly seconded.

PRESIDENT HILDRETH: Are you gentlemen ready for the substitute motion?

MR. OWENS: Very few of us lawyers understand that thing. Legal governmental work is entirely routine. The legal forms must necessarily, under governmental regulations, be approved in Washington, and I think as a practicing attorney, and having had some experience, that it is quite a charitable thing for these various loan agencies to prepare the various forms necessary to go through the government work.

Our trouble is right at home here where your legislature says that a lawyer can't charge, as a matter of cost in foreclosure, over $25. That has been on the books for sometime and I haven't heard very much kicking about it. The reason that the governmental institutions and the various organizations prepare and require standard forms is because the fellows out here in the country handle the thing so rottenly and so carelessly that it incurs additional expense for those institutions to revamp and check the work of the lawyer out in the country that handles it for the banks. We know that to be true.

The government says, "Here is an abstract, we will pay you a stated fee to examine that abstract. It doesn't make any difference how many items, we want you to examine the abstract and give us a written opinion for which we will pay you a stated fee. We want you to foreclose the mortgage in accordance with forms of the legal department." Nine times out of ten those forms have been prepared by North Dakota lawyers who have briefed the subject.

As a personal experience, I sent out 25 mortgages in North Dakota and Montana and received 25 opinions from Montana, North Dakota and Minnesota attorneys. Those opinions were checked by general counsel of the government office in St. Paul, re-checked in Chicago, and when they got to Washington, I found it necessary to say, with all due respect to these various counsel "The mortgages are illegally executed," simply because the attorneys out here have not taken the time to notice the statute requiring certain things to be done before the mortgage was legal.

I think that as long as this is purely governmental work, that they ought to do it as the department requires, and if it comes along with sufficient volume to any one lawyer to pay him for doing it, let him accept the fee. I think it is perfectly all right. For that reason I move you, Mr. President, that the resolution be laid on the table.

PRESIDENT HILDRETH: There is a motion here on the main question, and the substitute motion. The motion is now made to lay the whole subject matter on the table. That is not debatable. The motion now before the house is to lay the whole subject matter, the main motion and substitute motion, on the table.

MR. BURTNESS: Has that been seconded? If not, I will second it.

MR. . . . . : I rise to a point of order.

MR. BURTNESS: As I understand him he made a motion to lay the whole subject on the table.

PRESIDENT HILDRETH: That is correct.

Motion duly put, and President declared it was carried; however, a division was called for.

Very well, all those who favor to lay the motion and substitute motion on the table will rise. Those who are opposed will rise. The motion to lay the matter on the table is defeated.

MR. BURTNESS: I desire recognition on the question. Personally, I favor the motion made by Mr. Wartner to refer this entire matter to the Executive Committee. Our firm happens to be one of those that has had a little business in two or three counties from the Federal Land Bank. I do believe that the committee which drew the report, or which formulated the complaint or resolution, is not entirely in form as to just what the procedure is.

I don't think it takes a great deal of work for the Executive Committee, or anybody else, to find out what it is. I think it is undisputed. I will gladly indicate it to you insofar as it is in any way connected with our office. Until a few months ago all foreclosure papers, insofar as the Federal Land Bank is concerned, were prepared in the local attorney's office, with the exception of the notice of intention to foreclose. More recently they have prepared the summons and complaint. When the suggestion is made they prepare any subsequent papers so that the work of the local attorney is merely clerical when those papers come to them.

I think it is based entirely on a false assumption. The local attorneys to whom the papers are sent are held responsible to check them over to see whether they are properly drawn, to determine whether all the parties defendant are included, etc., and a report must be made with reference to it.

Mr. Owens has well brought out undoubtedly those papers have been drawn under the supervision of former North Dakota attorneys who are working in the Federal Land Bank. Aside from the preparation of the proposed summons and complaint, at least so far as any information has ever come to me is concerned, no other papers are prepared in the St Paul office. Now I don't like that. I would much prefer, of course, to have the opportunity of preparing all of the papers in any action that comes to us but nevertheless they are probably not in much different position from any business houses which secure attorneys at the later end of some sort of big business proceedings, whatever it may be.

Now when it comes to a matter of fees, let's be frank and practical about the fees, too. We all recognize that since our legislative bodies, presumably in the interest of the owner of the land, thought it would mean less expenses to the owner to do away with all foreclosure by advertisement, require foreclosure by action. We recognize full well that any office that has many foreclosures has a great deal of stenographic work to do, a great deal of supervision and oversight in it, so it is quite a convenience, of course, to have the summons and complaint prepared, but nevertheless, all of us prefer the other procedure, so if anything can be done to prevail upon any of the governmental bodies, whether it be the Federal Land Bank — that is the only one I know anything about — why of course, it would be to the best interests of the people of the state.

I do not feel that we should have any great lengthy questionnaire to ascertain the facts, which are undisputed. I think the Executive Committee can very well handle it in some appropriate way, possibly take it up with the powers that be and arrange for some plan.

As to the fees, those agents are not very much different than the private institutions which are doing business, particularly requiring foreclosure, my experience is they set the fee. The Federal Land Bank sets the fee; the insurance company has set the fee.

The fee schedule set by the State Bar Association cannot be maintained and retained and keep any business in your office. Frankly, I plead guilty here to accepting fees that are less than that schedule which is recommended. Most of us try to conform to it as much as possible, but if it is too high, then I suggest that the new committee may at least try to attempt to adjust it in such a way that it can be maintained in good faith by the Bar of the State. As I see the situation in these times you can't expect attorneys to take an arbitrary position whereby they say, "If I don't get that fee I won't handle the business." I don't know of any one who has been so high and mighty, so interested in the Bar of the state, that he has taken that attitude. If there is some one, I want to commend him. I want to say he is far more independent than some of us dare to be under the economic conditions as they exist in North Dakota at the present time.

I believe the matter can be very appropriately referred to the Executive Committee and possibly some adjustment be made along the line.

MR. TORKELSON: I plead guilty to one of the culprits that objects to this resolution. I received a few mortgage foreclosures from the Federal Land Bank in my county and some of the statements contained in that resolution are untrue.

It is true that the notice before foreclosure is prepared and served in St. Paul and it is also true that the summons and complaint are prepared in St. Paul and sent out, but with the instruction to recheck them and if necessary to correct them as apply to any deletions or additions that may be necessary, and we are charged with the duty and held responsible for making all the necessary parties, party to the action, and in almost every case that has come to my office, I have found it necessary to name additional parties or eliminate some of the parties that have been named in the original summons and complaint.

We attend to obtaining service, filing affidavit, and obtaining service by publication, when necessary, and we draw all the findings of fact, conclusions of law, enter the judgment; in fact, do everything except drawing the summons and complaint and notice before foreclosure. The attorneys in charge of the office of the foreclosure section of the Federal Land Department which handles the North Dakota foreclosures are North Dakota attorneys who have practiced in this state for many years. The chief attorney in charge is Stanley Casey, formerly practicing in Rugby.

Insofar as the fees are concerned, in foreclosures that I have handled, I have found the fees are pretty much in line with the fee schedule.

MR. LACEY: It simply brings us back to corporations practicing law. Some of these land banks do hire lawyers in North Dakota, pay them a salary and they charge all they can for having these mortgages foreclosed. Now there isn't any reason in

the world why business that belongs in North Dakota should not come to lawyers in North Dakota, and the papers prepared by them.

I have seen some papers sent out by the Federal Land Bank and I don't think they are models of pleadings; in fact, I think they can be well improved upon by our own lawyers in North Dakota. I think something ought to be done about it. I think it ought to be referred to either the committee on ethics or some other appropriate committee to look into the matter. I think if we stand pat, when the lawyers get the business, we will get a larger fee for doing it. The work ought to be done in North Dakota instead of St. Paul.

MR. OWEN: I plead guilty to about three years being one of the fellows that prepared government forms and which were sent out to attorneys, and I am very proud to say that my Democratic friends who are now occupying those chairs are following some of the forms that I made, and I know as a matter of practical policy that it is necessary to do that very thing.

I just don't understand why the Land Bank should be singled out for criticism. There are at least fifteen of the government institutions doing the same thing. What I seriously object to, and I think the Bar's attention should be directed, is to the unauthorized practice of law by the agencies that go out into the country, out into our towns, and have an office at the hotel or some other place, and have clients come in and they make out all papers necessary for the execution by that client.

If us lawyers who are not in government service get too tough about our fees, we will burden the office of the United States Attorney in doing all of this work on his salary, and we won't get anything out of it. As it is, there are some of the boys in various towns who are now getting a little money, getting a meal ticket, and I believe that the resolution is not broad enough.

I don't see any reason why they should single out the Federal Land Bank. That is a well organized institution. Most of the banks have very capable legal departments, have lawyers on their force in various states and in their districts, and those attorneys supervise the business that goes into their own home states, so if this resolution goes to the Executive Committee, or whatever committee is to take action on it, I had hoped that they would broaden that investigation, particularly into what the banks or governmental institutions and corporations are paying, both as to the practice that is now in existence, and for those who are not lawyers transacting business.

I would be in favor of the motion that it be referred to the Executive Committee, and the Executive Committee then, I trust, refer it to the proper sub-committee for detailed investigation.

PRESIDENT HILDRETH: There are two motions before the House, the first motion is to adopt in a general way this report.

The substitute motion is to refer this report to the Executive Committee. A motion was made and defeated to lay the whole matter on the table. The motion now before the House is to adopt the report.

MR. STUTSMAN: Is not the motion to refer the report to the Executive Committee the first motion to be voted upon?

PRESIDENT HILDRETH: The first motion is to be voted upon.

Motion put and defeated.

We will now vote on the substitute motion. Those who favor the substitute motion that this matter be referred to the Executive Committee, say aye; contrary. Carried.

The meeting will stand adjourned until two o'clock this afternoon.

Afternoon Session

PRESIDENT HILDRETH: It has been suggested that Judge Amidon will be eighty years of age on the 17th day of this month, and that it will be a great compliment on the part of this body to send him a telegram of greeting. If there isn't any objection on the part of any of the members present, I will authorize the Secretary to send a telegram to Judge Amidon of greetings on his eightieth birthday on the 17th day of August. Is there any objection? There being none, the order will stand.

Is the chairman of the Committee on Memorials ready to report?

SECRETARY MCBRIDE: We have a voluminous report here of the Committee on Memorials, in regard to members who have passed on during the last year. I think it is in order that we have a motion to dispense with the reading of same and have it printed in our annual report.

MR. PALDA: I so move.

Motion seconded, duly put and carried unanimously.

REPORT OF MEMORIAL COMMITTEE

Since our last report nine of the respected and beloved members of our Association have gone from us to their final rest, and they are:

JUDGE J. A. MURPHY
JUDGE E. T. BURKE
MR. VAN R. BROWN
JUDGE V. R. LOVELL
HON. TRACY R. BANGS
MR. HARRY W. STEWART
MR. ANTHONY T. FABER
MR. BURDETTE DAVID TOWNSEND
MR. IVAN H. BREAW

And a memorial sketch of the life of each of them is, herewith, submitted, and we have been again thus reminded that time here

is not our own, but rests in the hand of One greater than any human power, and when He calls, all must obey, for He is omnipotent, and His judgment is final.

It may be that there are some who differ with the conclusion evidenced by the foregoing remarks, and seem happy in the thought that we are just mortal, and that when this earthly life ceases, the end of all things has come to us.

When we consider all the evidences surrounding us even here —our own aspirations — the flow and ebb of life — the ever changing of things in nature — the autumn when all things seem to die — but only sleep awhile, for in the glorious dawn of springtime, all nature is revived into what seems a new life — when in reality it is only a renewed and more vigorous, more beautiful life.

The writer ponders if God in His greatness could so change matters in the more material sphere, and then overlook provision and care for man — His greatest creation?

Some of our very best men and greatest lawyers seem to view such matters with skepticism, or, at least fail to take note of what would appear to them in ordinary life, or in their law practice, as worthy, and indisputable evidence of real facts.

But nevertheless, and after years of experience, the writer is thoroughly convinced that the members of our profession are among the best people in this world, and that while they do not speak of such matters, yet we know that they think of them, and that they consider them, and that their faith is unshaken, and that they do not fear concerning the end, which will surely come to all of us.

(See Memorials following proceedings)

RESOLUTIONS

NOW THEREFORE, BE IT HERE AND NOW RESOLVED, That in the death of these honored members of our Association we severally and unitedly express our deep appreciation of them, and of the lives they lived, and of the services they rendered, not only in the immediate line of their work, but as earnest, loyal citizens and residents of their respective communities, and that we deeply mourn their loss and express our deepest sympathy for each and all of the members of their respective families, from whom they are separated for a time.

Among the older members of our profession in this state the ranks are fast thinning, and some of the present membership will doubtless live to the time when none of those who might be termed the "Old Guard" of the profession in this state, will be here to meet and greet you.

I believe it will go without saying that that portion of the membership of our Association, who may be termed "the rising generation" in our profession, will ever remember and hold in respect the members of the "Old Guard", who, I am sure as a class

have ever tried to aid the younger members, and to maintain and uphold the high standards of our profession.

This will surely be the case because it runs in the blood of real lawyers to be friendly and sympathetic and to appreciate the good they find in other members of the profession, and in the younger element we know it is their desire and their will to emulate the good things which they observe in the older members of the profession, and to be kind and considerate, one towards the other, no matter what courtroom differences they may have, and to cherish the better things, not only in the profession, but in life itself.

BE IT FURTHER RESOLVED, That a copy of these biographies and of these resolutions be sent to the families of the deceased members, and that the originals hereof be filed with the Secretary of the Bar Association, and spread at large upon the records in his office.

Dated at Grand Forks, N. D., this 29th day of June, 1936.

H. A. LIBBY,
Chairman Memorials Committee.

Mr. McBride moved the adoption of the report. Carried.

PRESIDENT HILDRETH: We will hear the report of the Resolutions Committee.

MR. BRONSON: The Committee on Resolutions beg to report, and move for adoption the following Resolution:

BE IT RESOLVED, That the North Dakota Bar Association extend its appreciation and its sincere thanks for the fine hospitality shown to us by the City of Fargo, and by the Cass County Bar Association during our too brief stay at this convention. Imperial Cass has again done itself proud; we as well as the ladies, have been fed and regaled, and now we know Fargo as a real hospitable host.

BE IT RESOLVED, That we appreciate the interest of the judges of our Supreme Court, and of our District Court, who have honored us by their attendance at our meeting.

BE IT RESOLVED, That we express to our about to retire President, Colonel M. A. Hildreth, our appreciation of the splendid work and ceaseless toil he has performed as president of this Association; and we likewise express to the secretary our appreciation of him who came in, as it were, as a pinch hitter to fill out a vacancy during the past year; and we praise his devoted services.

BE IT RESOLVED, That we render herewith a vote of thanks to the Fargo Chamber of Commerce; to the Fargo Forum; to the Fargo Country Club; to the Elks; to the Masonic, Shrine and the allied organizations of Masonic fraternity; and to the hotels for their kindness to us during this convention.

BE IT RESOLVED, That the North Dakota State Bar Association extend to the Honorable William L. Ransom, President of the American Bar Association, and now an honorary member of this Association, its sincere appreciation of his kindness and courtesy in attending our meeting, and for the splendid address he has given to us upon the co-ordination of the entire American Bar, as the first integrated Bar in our union. We view with pride and enthusiasm the efforts now being made to bring the entire Bar of our country into an organized, voluntary, independent self-governing democratic organization of its own, the American Bar Association, and we commend the efforts of President Ransom in the program presented to us so to do and so to accomplish.

BE IT RESOLVED, That we express our appreciation and our gratitude for the fine addresses that have been presented to this Association during this meeting, and for the interest, the attention and the work of the committees of this Association on the respective topics assigned to them to present at this meeting. They have been interesting and instructive reports, all of which are of such importance in holding the respect of laymen for the Bench and the Bar.

Mr. President, your Committee on Resolutions, Judge Shaw of Mandan, Judge Burnett of Fargo, and myself, respectfully submit these Resolutions for your approval and I move their adoption.

PRESIDENT HILDRETH: I will ask the Secretary to put the motion.

Motion duly seconded, put and carried.

PRESIDENTIAL ADDRESS

THE OLD-FASHIONED LAWYER

by

M. A. HILDRETH, President,
North Dakota State Bar Association

Fifty years or more have changed the entire legal profession. With modern offices, the law business is transacted by machinery. The typewriter was invented in 1877. It has taken the place of the old quill pen. In olden days the old-fashioned lawyer wrote out his long briefs by hand. He cited a few cases, but he would rely very largely upon what some of the great text writers, such as Blackstone and Kent, had said about law.

He dressed in a Prince Albert, wore a slouch hat, long-legged boots, sometimes chewed tobacco, drank good whiskey, fought his cases on the square and, if he was a village lawyer, he was the legal adviser in the community. He lived well, had his horse and buggy, took a ride with his family, sometimes attended church, and loved a baseball game, played a swift game of cards, was generally well thought of, kept people from getting into litigation and helped people in getting out of litigation. Such was the old-

fashioned lawyer of fifty, sixty or seventy-five years ago. He is gone forever in our professional lives.

The modern lawyer, be he a graduate of a law school or a clerk in the law office, is a handy man. He looks up citations of authorities. He names encyclopedias and various digests. If he writes a brief, he cites two or three hundred cases that he never has read and that he ought to know the judges of the court will never read. He thinks that by placing a multitude of cases in his brief, he will frighten the court into believing that his side of the case is right. But when he gets his opponent's brief, he finds that his opponent is likewise a modern lawyer. He is up-to-date on all the new-fangled methods of practicing law. He has a brief, and if he has counted the cases cited in his opponent's brief, he usually puts in fifteen or twenty or two dozen more than his opponent.

Thus the modern lawyer comes into court. He is well-dressed, well-groomed, has an automobile for which he has not paid, has one or two stenographers, has an adding machine, telephone and all the machinery of a complex law office of modern times. He has a system of bookkeeping and the client has a debit and credit page on his books. The client is charged with postage, telegraph calls, telegrams, consultation fees, fees for preparing the case, argument in the courts, final judgment whether successful or otherwise, and he hands to his client an itemized statement of services and expenses in harmony with the business of today.

The contrast between the old-fashioned lawyer and the new-fashioned lawyer is unique. The old-fashioned lawyer was eloquent before a jury or court. He sometimes took two or three days to argue his case in the courts, and the multitude listened to him. They came from long distances to see and hear the lawyers fight in the courtroom. It was a great day in olden times for the traveling judge and lawyers who went from circuit to circuit to hold court, try their cases, talk politics on the side, and often play an old-fashioned game of poker or have a wrestling match, or sometimes a real, genuine fist fight on the green which settled all the issues in the case.

The old-fashioned lawyer was never mercenary. He took small fees. Sometimes he took his pay in horses, mules or beef. Oftentimes, after attending the circuit, he might drive his stock home, put them out in his neighbor's pasture and gradually collect his fees by selling off his stock as best he could. Hard money was scarce. Shin plasters prevailed. We did not get specie payments in the country until 1879. After the Civil War, times were very hard, but there was plenty of law business. Fees were never extravagant in the olden days. Many a case involving important questions would command a fee of from Twenty-five to Fifty Dollars a day. Arguments in the courts lasting as I have said, two or three days, would bring in a fee maybe of One Hundred Fifty to Two Hundred Dollars. The income, therefore, of the old-

fashioned lawyer as compared with the modern lawyer, was modest. The old lawyer, if he realized Five Thousand or Ten Thousand from his practice, was looked upon as one of the leading lawyers in the community; but this old stock made good judges. Some men who have been on the bench, who we now quote occasionally when we have a difficult case, came up from the ranks of the old-fashioned lawyer of fifty or seventy-five years ago. They knew what justice meant. They brushed away technicalities and got at the real heart of a law suit. They realized that a judge must be honest himself, not only know the law, but he must have the ability to apply the law to a given state of facts.

The modern judge, who has grown up under our professional system of the last fifty or seventy-five years, is a book-worm in many instances, and he too is carried away with the idea of justifying his decision by citing what some other judge has said. Therefore, he cites in his opinion on perhaps a simple proposition some thirty to forty decisions from other courts, as though he feared that he was wrong in his measure of justice, but that some other judge had measured a similar case in the same manner as the one he was deciding and, therefore, he was standing on solid ground.

The trouble with American jurisprudence today is too much law, too much citation of cases. The people grumble, "What we want we are not getting—and that is that justice should be made simple and cheap so that he who needs this justice can get it". A thousand cases are decided every year when, if carefully examined, two or three citations of authorities or perhaps one or more would settle the law suit, and justice — which is the object and purpose of having judges and lawyers — would prevail.

This condition has grown with our growth and has resulted in many methods of eliminating the courts by appointment of masters in chancery, referees and a multitude of various court commissioners to take up and find and report to the courts facts which ought to be determined by some method that is speedy, inexpensive and judicial.

When Congress enacted a law creating the United States Circuit Court of Appeals because of the congested condition of the Supreme Court of the United States, it was thought and believed that some relief would be found from this harsh delay of justice, but it has failed, and now with ten United States Circuit Courts, and with a multitude of District Judges, there has grown up this constant congested condition which has interfered with the administration of public justice.

We have a great country, with one hundred twenty-five or one hundred thirty millions of people, and the modern lawyer loves to be in a courtroom. He loves technicality and with the great corporate life in this country, he educates himself along the line of finding that two and two does not make four, but only makes three in the construction of an insurance policy, or an ordi-

nary contract or bill of sale. As a result of this technical business in the administration of justice in the courts, people have lost confidence in the Bar and in the courts, and we hear all along the line that the courts are made for the rich and the powerful and that a poor man has no chance to win. It is true that there has been reform in some features of our judicial life and wise men have undertaken, by rules and regulations, to improve this condition which confronts the courts. This was not true with the lawyer of old. He speeded his cause and was ready to try it when it was called. He spent little time in examining the members of the jury. Few questions were asked and the jury was sworn to try the cause. He sat by the table with his pen and took from the lips of the witnesses their testimony. The judge speeded the cause. Frequently I have heard the judge say "Come along with the case now. You are taking too much time. This witness whom you have called here does not know anything about this case. Step aside, sir". If a judge should do that now under the modern system of administering justice, the ground work for an appeal to set aside the verdict or for a new trial would be a part of the administering of justice in the modern way. Is there any remedy for this situation?

I have said that the administration of justice is the highest duty imposed upon mankind. The lawyer is a mere minister of the courts. He must be absolutely honest. It doesn't do to say that he shall be honest as the world goes; he must be honest in his heart as well as in his head, and therefore the worst evil that can come to the Bar is a crooked lawyer.

The old-fashioned lawyer had dignity and respect for the courts; dressed in his Prince Albert with his long-top boots, he argued his cause. If he lost, he smiled, went to the tavern and perhaps bought one or two good drinks for his opponent. The modern lawyer is an almighty poor loser. He kicks the courts and he kicks the jury, but he never kicks himself. He sometimes says that his opponent has been dishonest and oftentimes he is quite sure the judge has a leaning way over on the other side. This modern feeling has excited in the minds of many of our citizens a feeling that our system of jurisprudence is wrong; that cases should be decided promptly in the courts; that justice delayed is justice denied. Therefore, there is much in my statement that delays in the administration of justice are not only dangerous, but have a tendency to destroy the confidence of the people in the administration of the courts. Attempts to remedy this condition have, in a measure, succeeded in many of the states of the Union, but there is no reason why a defendant should have thirty days in which to answer a complaint, and there is no reason why a case at issue should not be immediately placed upon the calendar for trial without any notice whatsoever to the opposite party, and when the case is called during a term of court, it should be tried, promptly disposed of, and in such a manner that plaintiff and defendant will go out of the courtroom, not as enemies, but believing that they have had a fair trial in a fair court, and their rights have, therefore, been solemnly determined by a just judge.

We may never reach the ideal of any function of human affairs, much less in the hard task of administering justice, but if the lawyers and the courts would see what they should see — that the delays in administering the rights of people always cause and always will cause a feeling of uncertainty in our judicial system,— they could prevent in a great measure some of the delays which are hampering the administration of justice.

The modern lawyer can do much to bring about a reform in some of the practices of our courts. If he keeps in mind what his duties are to his client and the court, he can at least assist in wiping out technical delays; in so doing, he will not only help his own client, but he will have the confidence and respect of the courts and his brother members of the Bar.

The law business is very different from what it was fifty years ago. The Bar is no place for a lazy lawyer. He must be active, diligent and absolutely honest to his clients and to the court. If he makes collections, he should remit immediately. If he does not, he may dream the collections are his; therefore, he would cheat himself. A law suit won by indirect methods is always full of bitterness. It cheats the winner and the loser. Therefore, the lawyer of the future must be 100% honest, or he cannot succeed. His best capital always, whether in the Courtroom or outside of the courtroom, is that he is an honest lawyer.

M. A. HILDRETH.

Mr. Murphy moved a vote of thanks to President Hildreth for his splendid address.

Unanimously adopted.

PRESIDENT HILDRETH: Now comes the election of officers. The first officer to be voted upon is the President of this Association for the coming year, commencing in September.

MR. FOSTER: Mr. President, we have with us in this meeting a man who has taken a great deal of interest in Bar affairs in the state for many years. There is no use for me wasting any time extolling him because he needs no statement regarding his fitness for the office, from me or any one else. It is a great pleasure for me to place in nomination the Honorable C. J. Murphy of Grand Forks for President of this Association.

MR. BURTNESS: I rise on behalf of the Grand Forks County Bar to second the motion of Mr. Foster for C. J. Murphy as President. I feel he has served the Association well and we take pleasure in seconding the nomination.

MR. CUTHBERT: I move you that the nominations be closed and that we elect Charley Murphy unanimously as President of the Association.

Motion duly seconded, put and carried unanimously.

PRESIDENT HILDRETH: Mr. Murphy is called upon for some tentative remarks.

MR. MURPHY: Mr. President and Friends: I am not here to talk. I don't care to impose upon this gathering by making any extended speech. You have already been punished severely during the sessions but I want to say that I am a victim of a practical joke. At the last session of this Association, I made a certain plan, the second day of the meeting with some of my friends, among them good old lovable Mat Murphy, and another of the group was this high-binder sitting to my right, Charley Pollock. I had the most beautiful frame up for an afternoon's entertainment in which I expected there would be considerable profit. I had made all necessary preparations to introduce these gentlemen properly to the golf links at Grand Forks. We had the schedule of penalties all arranged. It was the last day of the session and we were going to wind it up in a proper manner in every respect. I went down to my house to get my automobile to drive these fellows out to the course, and bearing in mind, and having in mind that undoubtedly this excursion that had been planned would cost them some money, Murphy and Charley here and a few of the others, decided they would try and elect me to the vice presidency, and they called that engagement off, and they put over their program.

I have thought from time to time during the past year that this body of men might experience a lucid interval and that this Association might be saved from the ignominy of having such an officer at its head, but undoubtedly upon the theory of passing the buck, that has not happened.

And so fellow President, you have elected me to this highly honorable position. Ladies and gentlemen, in all seriousness, I desire to express to you my sincere appreciation for what you have done. I realize my short comings; so far as the work of this organization is concerned, I have never had a great deal to do with the organization. I have reaped the benefit of the work of the Association, and I realize that it is now up to me to try and find out what it is all about and try to do something for the organization, and for the lawyers of the State of North Dakota.

I realize that this is one of the greatest honors that can be conferred upon a lawyer and I assure you in all seriousness that I very much appreciate the honor that you have conferred upon me, and I will do my level best for the organization. I only hope that I shall succeed in accomplishing as much for the organization as my predecessor, Colonel Hildreth, and the other esteemed presidents we have had in the Association.

PRESIDENT HILDRETH: Now the next is the Vice President.

MR. YOUNG: I think that never in my connection with this Association have I nominated any one for an office in the Asso-

ciation, but this year I rather crave the privilege which I now assume to exercise.

Almost thirty years ago I located in western Bottineau County to start the practice of law. At that time there was in Minot a young judge who, for a short period, had graced the district bench of his district. At that time he was engaged in the practice of law in Minot. He had the aptitude and the resourcefulness and the daring and the tenacity which so commonly characterized the successful lawyer. As a novice there were times when I was at a loss to know what I should do with problems which came to me from would-be clients, and on such occasions I either presented my problems, or sent my clients to this practitioner.

I had this interesting experience, he never talked down to me, though I was a beginner, and he was experienced. He dealt with me as an equal and in all of the years that have intervened, he has continued a credit to the profession, and has retained the viewpoint of youth.

I took a good look at him today and marveled at his physical preservation. It seemed to me that he did not look a day older than he did the first time I saw him. I was not the only novice with whom he dealt as he dealt with me, and aside from his professional attainments, I happen to know of instances in which he manifested a heartiness that is most unusual in our profession. I consider it a privilege to present for this office Judge Palda of Minot.

H. E. JOHNSON: Mr. President, this is Henry E. Johnson of Minot. I am happy to be here this afternoon and represent the local Bar Association of Ward County, and as a representative of that Bar Association, and personally for myself, I take great pleasure in seconding the nomination that Mr. Young has made for the appointment of Judge Palda as Vice President.

MR. WARTNER: I also wish to second the nomination that has been made by Mr. Young. I have known Judge Palda for a great many years. I knew Judge Palda when he first came to Kenmare, North Dakota, and practiced as a young attorney. I learned to know him when he was on the Bench in that District, which extended farther and longer than any other District in the State of North Dakota. I know he graced the Bench well, as you do. I therefore have the pleasure to second the nomination, and wish to include in that seconding nomination a motion that the rules be suspended and that the Secretary of this Association cast the unanimous ballot for Vice President.

FRANCIS MURPHY: May I second the motion just made by Judge Wartner, and also Mr. Bangs wants to be included in it. I knew Judge Palda in this town of Kenmare quite a number of years ago. I want to tell you a story about him. Possibly many of you don't know about his love of youth. He has two most magnificent boys himself, but I had one who was a little obstreperous until Judge Palda took hold of him and straightened him out. Before that I didn't know what was going to become of him. My boy now is practicing law out in Idaho, but he has never forgotten that, and neither have I. I want to second the nomination.

MR. KNAUF: I rise to second the nomination of Judge Palda simply because he is a smarter man than I am. I say that in all due deference to myself. In 1892 I knew Judge Palda when he and I were students in a great law school and before I left the school, he stole the girl I wanted, so I want to second the nomination.

MR. CUTHBERT: Somebody will really tell the truth about the Judge. I move you we suspend further speeches and you, Mr. Secretary, to cast the unanimous ballot of this convention for Judge Palda for Vice President.

Question was called for, motion was duly seconded, put and carried.

SECRETARY MCBRIDE: I take great pleasure in casting the unanimous ballot of this Association for Judge Palda as Vice President of this North Dakota Bar Association.

MR. PALDA: Mr. President and Friends, Brother Lawyers: If there had been any more seconds to my nomination, I really would have thought I was somebody. I found out more about my qualifications than I ever realized before, but I want to say to you gentlemen, I more than appreciate the great honor conferred. I am not going to make a speech. I will see if I cannot demonstrate to you what really good judgment you have exercised.

We are confronted with a situation whereby the lawyers are nearly put out of business. I realize, and I know that President Charley realizes we will have to fight from now on through the coming years in order to preserve ourselves and preserve our standing, not only financially but our standing as members of society and citizens of the United States. In order to do that we must all work in unison and harmony, and I assure you that I have confidence that the Bar Association of North Dakota will do and will support its officers in trying to advance the best interests of this Association.

I thank you most heartily and I realize the great honor conferred upon me. I trust you will not be disappointed after twelve months have rolled around.

PRESIDENT HILDRETH: The next office is for the office of Secretary-Treasurer.

MR. CAIN: I desire to place in nomination for the office of Secretary-Treasurer the man who has given considerable of his time to the Bar Association work. For the past four years he has been President of the Sixth Judicial District Bar Association and would have been re-elected this year, but declined the honor and said he believed it was time some one else be selected in his stead.

A few months ago when our Secretary resigned prior to going to Idaho to engage in the practice of law, the Executive Committee appointed this man Secretary and Treasurer and in the few months he has had the opportunity to fill that office, he has made a very creditable showing. I believe he will make us a better Secretary during the next year than he has in the past few months. I therefore nominate M. L. McBride as Secretary of the Association.

MR. WARTNER: I wish to second the nomination that Jim Cain just made. I first began to know my friend McBride when he was in the State Senate in North Dakota in the years 1913 and 1915. I began to know then that he was a friend working for the interests of the State of North Dakota. As a true patriot of any state Mac was always on the job. He did the very best that any man did in that body. Therefore I take great pleasure in seconding the nomination of M. L. McBride as Secretary-Treasurer of the Association. I know he made a good Senator; I know he will make a good Secretary-Treasurer of this Association.

C. J. MURPHY: I desire to make the usual motion and insist that Mac cast the ballot, that the rules be suspended and he cast the unanimous ballot of this Association for himself as Secretary-Treasurer.

MR. LACY: Second the motion.

MR. OWENS: I am glad that Charley Murphy and Jim have found something he can do. When we were in school he didn't have to work much, and he bowls us over in the western part of the state. He is carrying on the same traditions and I would like to second that motion.

PRESIDENT HILDRETH: You are familiar with the election laws. I ask you to put the motion.

Motion was put by Mr. Owen, and carried unanimously.

SECRETARY MCBRIDE: Mr. President, according to your announcement of the vote, I cast the ballot for M. L. McBride.

Fellow members of the Bar, I don't intend to make any speech. I simply want to thank you for the vote of confidence you have given me and to assure you that it will be my constant endeavor to merit the confidence that you have shown me here today.

PRESIDENT HILDRETH: Is there any unfinished business?

MR. CAIN: Mr. President, under that order I would move that the North Dakota Bar Association affiliate with the Federation of North Dakota Associations. If I get a second to that, I will explain the purpose.

Motion seconded.

The purpose of this Association, Mr. President, as I understand it is this, for the accumulation and dissemination of information beneficial to the welfare of the State of North Dakota. It is a non-political organization. Practically every organization and association in the state is now affiliated with the Federated Associations of the State of North Dakota. There is an annual dues of $25.

If we affiliate, either the President or Executive Committee would select a representative to represent the Association on the Federation, but this Association, or any other Association affiliating with the Federated Associations is not bound by any vote or any issue that it is supporting or takes up unless that representative agrees to it, and then he must report it back to the organization before he will be bound by any action taken by the Federated Association, and if such issue is supported that this Association did not care to join in, its name would not be used.

I believe it is a very beneficial organization. For that reason I move that we, like the Dental Association, the Medical Association, practically every other one in the state, affiliate with the Federation of North Dakota Associations.

Motion duly put and carried.

PRESIDENT HILDRETH: Well, gentlemen, that seems to finish up the business.

MR. WATTAM: One further question that I would like to bring up here. We here in Fargo with the number of lawyers we have, find that it is not a burdensome task to put on this convention here in the City of Fargo. Some of the towns in the state, where there are not as many lawyers, it is a more difficult proposition.

It would seem to me that as some of the other Associations do, this Association should allot about $200 out of its funds to assist in putting on the convention in those towns, and I make a motion at this time that the Executive Council be authorized to make such an allotment hereafter.

All the funds for the entertainment of the convention here at Fargo were raised by the Fargo Bar, and we are not to be included in this motion, but I think it is no more than fair to put the burden of entertaining the Bar Association on some of the towns of the state where we do not have nearly as many lawyers as we do in Fargo; the Association, as a whole, should contribute some part of the expenses.

SECRETARY MCBRIDE: There is a provision in our budget for the allowance of $200. The last budget provided for $600 to the annual meeting and last year $500.

MR. WATTAM: As I understand that amount is allotted in there for the convention and is to be spent by the state officials, speakers, programs, etc., and no part of that is contributed or allotted to the entertainment fund of the local Association. I know that our local Association has by voluntary contributions of the members stood the expense of what entertainment is provided, and it is that entertainment feature that I had in mind when I suggested some allottment on the part of the Executive Council to the local Association.

SECRETARY MCBRIDE: We took care of a deficiency of $185 last year that was presented by the Grand Forks Committee. It is always understood to be taken care of out of these funds.

MR. WATTAM: If that is the case, then that fills the bill. I still think it should be on record that the Executive Council be authorized to make such allottment. I know the last time the Association met here at Fargo four years ago, the Fargo Bar received a rebate on the contributions that had been made. There was no contribution made by the State Association for that expense and there won't be any contribution this time from the State Association toward that expense but just so the Executive Council may be authorized to take care of that for some of the other meetings in the other towns. I think the motion should be passed on.

MR. LACY: If I remember correctly in 1932 when we had the State Bar meeting here, we did receive a rebate from the State Bar.

MR. NILLES: I think I know something about this finance problem. I have been here in Fargo for the last three sessions. I think Mr. Wattam is wrong. The State Association has made certain allowances in the past, at least as far as the Fargo meeting is concerned. Those allowances have been made on the basis of receipted bills for expenditures, like for printing of programs, sometimes the cost of the banquet exceeding the amount of the tickets sold, or something of that kind.

I don't understand that any local Association has ever had any assurance from the State Bar Association that it would be helped out in the matter of general expense by way of entertainment and otherwise, which is always in connection with a meeting of this kind.

The Cass County Bar Association has never received any rebate or contribution except on the basis of certain receipted bills, the expenditure of which was authorized in advance.

I do feel that these Bar Associations in small towns, who are charged with the duty of putting on a convention, ought not to have to do it, taking the chance of insuring expenses for which no return was guaranteed. I certainly am in favor of allowing not to exceed $200 to any local Bar Association so they may be assured they have the finance, or at least a good part of it, to successfully put on a convention.

Mr. Wattam made a motion and I will second it.

Motion duly put and carried.

MR. LEWIS: Now that you have settled that question, I would like to say one word. It is all in the resolution, of course, but the entertainment by Fargo has been most pleasant. The Fargo Bar has been most generous, most thoughtful, and I not only want to concur in the resolution, but I think we all appreciate the fine hospitality and want to add our personal expressions here for your efforts in making this such a pleasant meeting. We thank you for what you have done for us.

C. J. MURPHY: I almost feel like making a motion that we confer this privilege of holding the state conventions every year, upon Fargo. I don't make that as a motion, but I think the incoming administration will try to put that over.

PRESIDENT HILDRETH: As a citizen and taxpayer, I am sure there won't be any objection on the part of the people of Fargo.

We will treat you with generosity, and care for you as we generally do care for you. We can't drink much of this river water.

I want to say to you, as this is the last time I will have a whack at you, I want to thank the lawyers of the state who have so loyally stood by me during my term of office. If a man does his duty, it is not an easy job. If you glide over some things, you can't glide over all, and I have had excellent support from the Executive Committee and officers. I have had splendid support from the local Bar of Cass County, of which I am very proud.

And I will say to you, whether you come next year, or the next year, or the next year, these young men that have grown up here will see that you are well entertained.

I now thank you and this session is closed.

In Memoriam